

STATE OF NEW YORK

238

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to establishing the public water justice act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "public
2 water justice act".

3 § 2. Section 15-0109 of the environmental conservation law is amended
4 to read as follows:

5 § 15-0109. General jurisdiction.

6 The department shall exercise its powers and perform its duties in any
7 matter affecting the construction of improvements to or developments of
8 water resources for the public health, safety or welfare, including but
9 not limited to the supply of potable waters for the various municipi-
10 palities and inhabitants thereof, the use of water for industrial,
11 commercial, and agricultural operations, the developed and undeveloped
12 water power of the state, the facilitation of proper drainage and the
13 regulation of flow and improvement of the rivers of the state.

14 § 3. Article 15 of the environmental conservation law is amended by
15 adding a new title 35 to read as follows:

TITLE 35

PUBLIC WATER JUSTICE

Section 15-3501. Definitions.

19 15-3503. Legislative findings and intent.

20 15-3505. Prohibition of diversion or transfer for the sale of
21 water.

22 15-3507. Exceptions to prohibitions.

23 15-3509. Authorized sale of water.

24 15-3511. Use of public water justice funds.

25 15-3513. Rule making authority.

§ 15-3501. Definitions.

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets
[-] is old law to be omitted.

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1 As used in this title the following terms shall have the following
2 meanings:

3 1. "Affordability" means measures or other assistance to assure equal
4 access to adequate clean, safe water and sanitation, without discrimi-
5 nation, interference or inequitable or unjust termination of the right
6 of access to water by any person or household of persons with insuffi-
7 cient income from hardship or disability to pay the full rate or price
8 for access to a minimum water supply to protect health and sanitation
9 for their dwelling.

10 2. "Applicant" means a person, corporation, or other organization or
11 entity applying for a license under this title.

12 3. "Community public water supply" or "public community water supply"
13 means a public water supply that provides year-round service to not
14 fewer than fifteen living units or which regularly provides year-round
15 service to not fewer than twenty-five individuals.

16 4. "Customer service connection" means the pipe between a water main
17 and customer site piping or building plumbing system.

18 5. "Customer site piping" means an underground piping system owned or
19 controlled by a customer that conveys water from such customer's custom-
20 er service connection to building plumbing systems and other points of
21 use on lands owned or controlled by such customer. "Customer site
22 piping" shall not include any system that incorporates treatment to
23 protect public health.

24 6. "Disadvantaged community" shall mean such communities as identified
25 pursuant to section 75-0111 of this chapter.

26 7. "Diversion" means the transfer of water by any means, including in
27 a container intended for an immediate or end-use consumer from its
28 source in one lake or watershed to another lake or watershed.

29 8. "License" means the authorization pursuant to section 15-3509 of
30 this title by the state to allow the withdrawal, removal, diversion
31 and/or transfer of waters of the state by any person for the purpose of
32 the production and sale of bottled water.

33 9. "Licensee" means the holder of a license under this title.

34 10. "Public water supply" means a community public water supply or
35 waterworks system that provides water for drinking or household purposes
36 to persons other than the supplier of such water, and shall not include
37 either of the following:

38 (a) A waterworks system that supplies water to only one dwelling or
39 multiple dwelling, as such terms are defined by section four of the
40 multiple dwelling law; or

41 (b) A waterworks system that consists solely of customer site piping.

42 11. "Royalty fee" means compensation to the state for the authori-
43 zation of a license to allow a withdrawal, diversion or transfer by any
44 person from the sovereign waters of the state for the purpose of produc-
45 ing and packaging water for the sale of bottled water under section
46 15-3509 of this title.

47 12. "Sale of water" means the production, packaging or delivery of
48 water from a water source or public water supply in containers or by any
49 other means in exchange for money or other consideration.

50 13. "Sale of bottled water" means water withdrawn from a water source
51 or public water supply and transferred or diverted to a plant or other
52 facility for the sale of water in a container or package of not more
53 than 5.7 gallons.

54 14. "Spring water" means spring water as defined in 21 C.F.R. 165.110
55 for bottled water.

1 15. "Watershed" means the watershed of primary rivers and the sub-wat-
2 ersheds of their tributary streams and creeks.

3 16. "Waterworks system" means a system of pipes and structures through
4 which water is obtained and distributed, including but not limited to
5 wells and well structures, intakes and cribs, pumping stations, treat-
6 ment plants, storage tanks, pipelines and appurtenances, or a combina-
7 tion thereof, actually used or intended for use for the purpose of
8 furnishing water for drinking or household purposes.

9 17. "Water main" means a pipe owned or controlled by a supplier that
10 may convey water to a customer service connection or to a fire hydrant.

11 18. "Waters of the state" groundwater, lakes, rivers, and streams and
12 all other watercourses and waters, including the Great Lakes, within the
13 territorial boundaries of the state, and shall include water withdrawn
14 from the waters of the state and delivered through public waterworks or
15 public water utility systems. Waters of the state shall not include
16 drainage ways and ponds designed and constructed solely for wastewater
17 conveyance, treatment, or control.

18 19. "Withdrawal" means the removal of water from surface water or
19 groundwater.

20 20. "Public water justice fund" means such fund established pursuant
21 to section ninety-nine-qq of the state finance law.

22 § 15-3503. Legislative findings and intent.

23 1. The waters of the state are held by the state as sovereign and in
24 public trust for the benefit of the people of the state of New York.

25 2. As trustee, the state of New York shall protect and sustain the
26 integrity of flows, levels, and quality of water, fish and aquatic habi-
27 tat for the use and enjoyment by citizens now and in the future.

28 3. As trustee, and based on the paramount public interest in the
29 waters of the state and public health of its citizens, the state shall
30 provide for and protect the right of access to safe drinking water,
31 water sources, public water supply, public waterworks and infrastruc-
32 ture, public health, and fishing, navigation, recreation, conservation,
33 and the reasonable use of water in connection with the ownership or
34 lawful occupancy of land, not limited to domestic, agricultural, commer-
35 cial, industrial and public utility uses.

36 § 15-3505. Prohibition of diversion or transfer for the sale of water.

37 Except as otherwise specifically provided in this title, no waters of
38 the state shall be withdrawn, taken, diverted, and/or transferred out of
39 any watershed of the state for the purpose of the sale of such water in
40 any size container, package, or in any other manner to another watershed
41 within or outside of the territorial boundaries of the state.

42 § 15-3507. Exceptions to prohibitions.

43 1. Prohibited acts under section 15-3505 of this title shall not apply
44 to any of the following:

45 (a) The withdrawal, treatment, distribution, and delivery of water
46 services by a public or private water utility or community public water
47 supply or waterworks system. The exception under this subdivision shall
48 not apply to the distribution or delivery of water to a person who
49 receives water from a public waterworks or public water utility system
50 for the purpose of the sale of such water.

51 (b) Products into which water from a private well or public waterworks
52 system or public water utility is incorporated, or water incorporated
53 into or used in a product other than water itself.

54 (c) The sale of water on premises from a private well or public water-
55 works system in a glass, bottle or other container, incidental to a

1 wholesale or retail restaurant, food service or other business or
2 commercial operation.

3 (d) The sale of water of the state in containers with a capacity of
4 not more than 5.7 gallons, but only if all of the following standards
5 are duly established and determined to be met by the department:

6 (i) such transfer and diversion of water is part of bottled water
7 production and sale facilities and operations already existing upon the
8 effective date of this section, subject to compliance with all other
9 provisions of this title, and authorized by the department pursuant to
10 section 15-3509 of this title;

11 (ii) determination that the water source that is transferred or
12 diverted is not spring water, unless otherwise authorized by the depart-
13 ment under section 15-3509 of this title;

14 (iii) determination that the withdrawal and transfer for the sale of
15 water will not impair or interfere with another water source, community
16 public water supply or any other public or private water well, infras-
17 tructure, waterworks system or with the water services and the public
18 health, safety and welfare.

19 (iv) determination that the withdrawal, removal, transfer and the sale
20 of bottled water is in compliance with all other federal, state, local
21 law and regulations; and

22 (v) issuance of license and payment of a royalty as authorized and
23 determined by the department to sell bottled water in containers with a
24 capacity of not more than 5.7 gallons, as provided in section 15-3509 of
25 this title.

26 2. The prohibitions under this section shall not apply to a lawful and
27 reasonable use of the waters of the state in connection with the use and
28 enjoyment of land by an owner or occupant or their guests, including any
29 lawfully recognized traditional and artificial reasonable uses of water
30 such as agriculture, manufacturing, generation of electricity or an
31 industrial use or process. Except as otherwise specifically provided in
32 this title, the sale of water withdrawn from the waters of the state
33 shall not be a reasonable use.

34 § 15-3509. Authorized sale of water.

35 1. The department is hereby authorized to issue a license to withdraw,
36 take, remove, and/or transfer from the waters of the state for the sale
37 of bottled water where the sale of such waters of the state shall be in
38 full compliance with this title.

39 2. The department shall not issue or enter into any license or other
40 agreement pursuant to subdivision one of this section for withdrawal,
41 taking, and/or transfer of the waters of the state to a person or entity
42 who proposes to engage in the sale of bottled water unless all of the
43 following conditions are met:

44 (a) Such person or entity submits an application to the department
45 along with proposed plans for bottled water facility and operation, or
46 if such application is for the continued operation of a bottled water
47 facility and operation already existing upon the effective date of this
48 section, an application with a description of such exciting operations.

49 (b) For the licensing for the sale of bottled water from a municipal
50 or community public waterworks or public water utility supply, the
51 applicant has submitted certified proof that the water source is in
52 compliance with all other legal requirements from the local department,
53 board or local government that owns and operates the community public
54 waterworks or public water system.

55 (c) Before approval of such license, the department shall provide
56 written notice of the application of such license with conditions and

1 proposed royalty fees as provided in subdivision three of this section,
2 at least sixty days prior to such approval: to any local unit of govern-
3 ment, any community or public waterworks or water supply district,
4 authority or department, any recognized tribal sovereign government, and
5 to the applicant; to be published in a prominent newspaper with general
6 circulation in the locale of the water source or supply; and to be post-
7 ed on the department's website in a conspicuous manner. The department
8 may on its own or upon request of an interested person provide for a
9 public hearing, which shall be given the same public notice as provided
10 in this paragraph. Such public notice shall provide at least a forty-
11 five day comment period before approval of the license. Upon request of
12 a local unit of government or recognized tribal sovereign government in
13 which the water source or supply is located, the department shall meet
14 and consult with the local unit of government or tribe not less than
15 fifteen days before approval of the license.

16 (d) Before approval and issuance of the license, the department shall
17 evaluate, assure, and duly establish that all of the following are met:

18 (i) The applicant has complied with the provisions of this title;

19 (ii) The applicant has shown, based on subparagraph (i) of this para-
20 graph and all other available information, including public notice,
21 hearing, participation and comments or consultation with local govern-
22 ment, sovereign tribes recognized by treaty with the federal government
23 or other interested persons as required by paragraph (d) of this subdivi-
24 vision, that the withdrawal and/or transfer of the waters of the state
25 for the sale of bottled water is substantially in the public interest
26 and shall not impair the public trust and public health, safety, and
27 welfare;

28 (iii) The applicant has complied with the application and royalty fees
29 required by subdivision three of this section;

30 (iv) Any conditions the department shall have required in the license
31 or other agreement for the protection and promotion of the waters of the
32 state, public trust in such waters and the public health, safety, and
33 welfare of citizens and local community.

34 3. (a) Before processing an application for a license under subdivi-
35 sion two of this section, an applicant shall pay an application fee of
36 five hundred dollars and a fee of five thousand dollars or more as
37 determined by the department for reimbursement of the department's
38 expenses for processing and evaluating the application.

39 (b) An applicant shall pay a royalty fee for the right to withdraw,
40 remove and/or transfer the sovereign waters of the state or community
41 public water supply for purposes of the sale of bottled water as
42 follows:

43 (i) A licensee shall pay a royalty fee of not less than twenty-five
44 cents per gallon for the right to withdraw, take and/or transfer the
45 waters of the state for the sale of bottled water. Subject to public
46 notice, hearing and comment as provided for in subdivision two of this
47 section, the department may promulgate a higher fee per gallon based on
48 a reasonable evaluation and determination of fair and adequate economic
49 value for the right of sale of bottled water from the waters of the
50 state.

51 (ii) The licensee or the community or municipal public water supply
52 department or local government, as the case may be, shall file on the
53 first day of each month, beginning thirty days after the date of the
54 license, a written summary and report, with supporting data and informa-
55 tion, the total volume of water withdrawn. The licensee shall pay the
56 royalty fee required by this subdivision on a quarterly basis, beginning

1 with the first day of the quarter of the year after the date of the
2 approval and issuance of the license. The department may impose a late
3 fee according to a schedule of fees, payment, or interest established by
4 the department pursuant to rules promulgated by the department.

5 (c) The department shall deposit the royalty fee collected from each
6 licensee into the public water justice fund in accordance with all
7 applicable laws and regulations.

8 (d) The department's expenses, including all reasonable expenses
9 related to collection and management of fees under this section, shall
10 be paid and a net royalty fee payment made to the public water justice
11 fund on a quarterly basis, beginning with the third quarter after the
12 effective date of this title or the issuance of the first license under
13 this title, whichever occurs first.

14 (e) Where the water is from a water source or non-community supply
15 that is from the waters of the state, the net proceeds from each licen-
16 see shall be deposited in the public water justice fund.

17 (f) Where the water is from a community public water supply or water-
18 works, which withdraws and distributes the waters of the state as a
19 public service within its lawful territory, the net proceeds from each
20 license or other agreement shall be deposited in the public water
21 justice fund. Further, the department shall allocate an amount up to
22 twenty-five percent of the net proceeds of the public water justice fund
23 in any calendar year to the community public water supply department,
24 district or authority from which the water is withdrawn, taken, diverted
25 and/or transferred.

26 (g) For the purposes of this subdivision, the term "net proceeds"
27 shall mean net proceeds from royalties under this section, minus costs
28 and expenses.

29 4. (a) In addition to all other requirements of this title, a person
30 or other entity shall not be permitted to withdraw and transfer more
31 than fifty thousand gallons a day for the sale of bottled water as
32 spring water unless it is established by the applicant and determined by
33 the department that:

34 (i) there is sufficient existing actual data and information that
35 characterizes to the fullest extent possible the hydrological and
36 geological conditions required to accurately measure and calculate the
37 effect on the flows, levels and other physical conditions of the ground-
38 water, springs, wetlands, creeks, streams, lakes or ponds that have a
39 direct hydrological connection to the spring water source; and

40 (ii) based on the actual data and information established under
41 subparagraph (i) of this paragraph, the withdrawal and transfer of
42 spring water shall not measurably diminish and impair the flow, level
43 and other physical parameters of the wetlands, creeks, streams, lakes or
44 ponds, fish and other wildlife and plant habitat or the public trust in
45 such features, wildlife and habitat.

46 (b) Any decision or determination required by this section shall take
47 into account and be conditioned on the potential for, or occurrences of,
48 increased intensity and frequency of weather events due to changes in
49 climate.

50 § 15-3511. Use of public water justice funds.

51 The department shall direct the administration of the public water
52 justice fund in accordance with the provisions of paragraph (f) of
53 subdivision three of section 15-3509 of this title and section ninety-
54 nine-qq of the state finance law. In directing the administration of
55 such fund, the department shall consult with environmental justice

1 groups and other environmental justice experts as determined appropriate
2 by the department.

3 § 15-3513. Rule making authority.

4 The department shall be authorized to promulgate any rules and regu-
5 lations it may deem necessary to implement the provisions of this title.

6 § 4. The state finance law is amended by adding a new section 99-qq to
7 read as follows:

8 § 99-qq. Public water justice fund. 1. There is hereby established in
9 the joint custody of the state comptroller and the commissioner of taxa-
10 tion and finance a special fund to be known as the "public water justice
11 fund".

12 2. Such fund shall consist of all revenues received by the state,
13 pursuant to the provisions of title thirty-five of article fifteen of
14 the environmental conservation law, including but not limited to all
15 bonuses, rentals, delayed rentals, royalties, penalties or fines for
16 non-compliance collected by, or reserved by, the state under the
17 licenses for the sale of bottled water established pursuant to such
18 title.

19 3. (a) The moneys in such fund shall be expended for the following
20 purposes:

21 (i) assistance for water affordability plans or other measures,
22 including income affordability, assured low-cost minimum water use and
23 conservation, innovative pricing, rates, tiers of water use and conser-
24 vation, to assure equitable and affordable access to clean, safe water
25 and sanitation;

26 (ii) protection, conservation, efficiency, sustainability and cleanup
27 to assure safe, clean and adequate groundwater and surface water sources
28 for drinking water and water supplies within the state, including but
29 not limited to, new technologies, green infrastructure and enhanced
30 resiliency and adaptability to predict extreme weather events or climat-
31 ic changes;

32 (iii) protection of public health and individual health needs directly
33 related to investigation, medical examination and water quality and
34 medical monitoring; and

35 (iv) repair, improvement or replacement of any line that is determined
36 to be a health risk to those who occupy any single or multi-family resi-
37 dential dwelling unit that connects to the public water main or pipeline
38 system.

39 (b) Any interested municipal public water supply department, district,
40 authority, or local government, or any person who lives within the
41 territory or is served by a community public water works or public water
42 utility may apply for a grant for one or more of the dedicated purposes
43 of the public water justice fund under this section. The application,
44 process, public notice, meetings, and decisions shall be processed by
45 the department. The department shall apportion and allocate the grants
46 of available funds in any given hearing in a fair and proportionate
47 manner among applicants that in the discretion of the department best
48 meets the intent and dedicated purposes of title thirty-five of article
49 fifteen of the environmental conservation law and any rules or regu-
50 lations promulgated thereto; except that there shall be a preference for
51 up to thirty percent of the fund distributed in any year for assistance
52 for affordability, disadvantaged communities and public health.

53 § 5. This act shall take effect on the one hundred eightieth day after
54 it shall have become a law. Effective immediately, the addition, amend-
55 ment and/or repeal of any rule or regulation necessary for the implemen-

1 tation of this act on its effective date are authorized to be made and
2 completed on or before such effective date.