

STATE OF NEW YORK

10666

IN ASSEMBLY

August 12, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gonzalez-Rojas) -- read once and referred 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.

15-3503. Legislative findings and intent.

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

15-3507. Exceptions to prohibitions.

15-3509. Authorized sale of water.

15-3511. Use of public water justice funds.

15-3513. Rule making authority.

§ 15-3501. Definitions.

27 As used in this title the following terms shall have the following
28 meanings:

29 1. "Affordability" means measures or other assistance to assure equal
30 access to adequate clean, safe water and sanitation, without discrimi-

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

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1 nation, interference or inequitable or unjust termination of the right
2 of access to water by any person or household of persons with insuffi-
3 cient income from hardship or disability to pay the full rate or price
4 for access to a minimum water supply to protect health and sanitation
5 for their dwelling.

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

8 3. "Community public water supply" or "public community water supply"
9 means a public water supply that provides year-round service to not
10 fewer than fifteen living units or which regularly provides year-round
11 service to not fewer than twenty-five individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 16. "Waterworks system" means a system of pipes and structures through
55 which water is obtained and distributed, including but not limited to
56 wells and well structures, intakes and cribs, pumping stations, treat-

1 ment plants, storage tanks, pipelines and appurtenances, or a combina-
2 tion thereof, actually used or intended for use for the purpose of
3 furnishing water for drinking or household purposes.

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

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

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

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

17 § 15-3503. Legislative findings and intent.

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

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

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

31 § 15-3505. Prohibition of diversion or transfer for the sale of water.

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

37 § 15-3507. Exceptions to prohibitions.

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

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

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

49 (c) The sale of water on premises from a private well or public water-
50 works system in a glass, bottle or other container, incidental to a
51 wholesale or retail restaurant, food service or other business or
52 commercial operation.

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

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

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

9 (iii) determination that the withdrawal and transfer for the sale of
10 water will not impair or interfere with another water source, community
11 public water supply or any other public or private water well, infras-
12 tructure, waterworks system or with the water services and the public
13 health, safety and welfare.

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

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

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

29 § 15-3509. Authorized sale of water.

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

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

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

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

50 (c) Before approval of such license, the department shall provide
51 written notice of the application of such license with conditions and
52 proposed royalty fees as provided in subdivision three of this section,
53 at least sixty days prior to such approval: to any local unit of govern-
54 ment, any community or public waterworks or water supply district,
55 authority or department, any recognized tribal sovereign government, and
56 to the applicant; to be published in a prominent newspaper with general

1 circulation in the locale of the water source or supply; and to be post-
2 ed on the department's website in a conspicuous manner. The department
3 may on its own or upon request of an interested person provide for a
4 public hearing, which shall be given the same public notice as provided
5 in this paragraph. Such public notice shall provide at least a forty-
6 five day comment period before approval of the license. Upon request of
7 a local unit of government or recognized tribal sovereign government in
8 which the water source or supply is located, the department shall meet
9 and consult with the local unit of government or tribe not less than
10 fifteen days before approval of the license.

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

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

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

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

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

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

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

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

46 (ii) The licensee or the community or municipal public water supply
47 department or local government, as the case may be, shall file on the
48 first day of each month, beginning thirty days after the date of the
49 license, a written summary and report, with supporting data and informa-
50 tion, the total volume of water withdrawn. The licensee shall pay the
51 royalty fee required by this subdivision on a quarterly basis, beginning
52 with the first day of the quarter of the year after the date of the
53 approval and issuance of the license. The department may impose a late
54 fee according to a schedule of fees, payment, or interest established by
55 the department pursuant to rules promulgated by the department.

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

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

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

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

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

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

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

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

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

46 § 15-3511. Use of public water justice funds.

47 The department shall direct the administration of the public water
48 justice fund in accordance with the provisions of paragraph (f) of
49 subdivision three of section 15-3509 of this title and section ninety-
50 nine-qq of the state finance law. In directing the administration of
51 such fund, the department shall consult with environmental justice
52 groups and other environmental justice experts as determined appropriate
53 by the department.

54 § 15-3513. Rule making authority.

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

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

3 § 99-qq. Public water justice fund. 1. There is hereby established in
4 the joint custody of the state comptroller and the commissioner of taxa-
5 tion and finance a special fund to be known as the "public water justice
6 fund".

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

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

16 (i) assistance for water affordability plans or other measures,
17 including income affordability, assured low-cost minimum water use and
18 conservation, innovative pricing, rates, tiers of water use and conser-
19 vation, to assure equitable and affordable access to clean, safe water
20 and sanitation;

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

27 (iii) protection of public health and individual health needs directly
28 related to investigation, medical examination and water quality and
29 medical monitoring; and

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

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

48 § 5. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law. Effective immediately, the addition, amend-
50 ment and/or repeal of any rule or regulation necessary for the implemen-
51 tation of this act on its effective date are authorized to be made and
52 completed on or before such effective date.