

# STATE OF NEW YORK

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238--A

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

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Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Legislative findings and intent. The legislature hereby finds  
4 that:

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

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

10 3. As trustee, and based on the paramount public interest in the  
11 waters of the state and public health of its citizens, the state shall  
12 provide for and protect the right of access to safe drinking water,  
13 water sources, public water supply, public waterworks and infrastruc-  
14 ture, public health, and fishing, navigation, recreation, conservation,  
15 and the reasonable use of water in connection with the ownership or  
16 lawful occupancy of land, not limited to domestic, agricultural, commer-  
17 cial, industrial and public utility uses.

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

20 § 15-0109. General jurisdiction.

21 The department shall exercise its powers and perform its duties in any  
22 matter affecting the construction of improvements to or developments of

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

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1 water resources for the public health, safety or welfare, including but  
2 not limited to the supply of potable waters for the various municipi-  
3 palities and inhabitants thereof, the use of water for industrial,  
4 commercial, and agricultural operations, the developed and undeveloped  
5 water power of the state, the facilitation of proper drainage and the  
6 regulation of flow and improvement of the rivers of the state.

7 § 4. Subdivisions 13 and 16 of section 15-1502 of the environmental  
8 conservation law, as added by chapter 401 of the laws of 2011, are  
9 amended and fifteen new subdivisions 17, 18, 19, 20, 21, 22, 23, 24, 25,  
10 26, 27, 28, 29, 30 and 31 are added to read as follows:

11 13. "Public water supply system" shall mean a permanently installed  
12 water withdrawal system including its source, collection, pumping,  
13 treatment, transmission, storage and distribution facilities used in  
14 connection with such system, which provides piped potable water to the  
15 public for potable purposes, if such system has at least five service  
16 connections used by year-round residents, a system that consists solely  
17 of customer site piping.

18 16. "Withdrawal" or "withdrawal of water" shall mean the removal or  
19 taking of water for any purpose from the waters of the state, including  
20 surface water or ground water.

21 17. "Affordability" means measures or other assistance to assure equal  
22 access to adequate clean, safe water and sanitation, without discrimi-  
23 nation, interference or inequitable or unjust termination of the right  
24 of access to water by any person or household of persons with insuffi-  
25 cient income from hardship or disability to pay the full rate or price  
26 for access to a minimum water supply to protect health and sanitation  
27 for their dwelling.

28 18. "Applicant" means a person, corporation, or other organization or  
29 entity applying for a license under this section for the sale of bottled  
30 water.

31 19. "Customer service connection" means the pipe between a water main  
32 and customer site piping or building plumbing system.

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

39 21. "Disadvantaged community" shall mean such communities as identi-  
40 fied pursuant to section 75-0111 of this chapter.

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

44 23. "Permittee" means the holder of a license under section 15-1503 of  
45 this title.

46 24. "Royalty fee" means compensation to the state for the authori-  
47 zation of a permit to allow a withdrawal, diversion or transfer by any  
48 person from the sovereign waters of the state for the purpose of produc-  
49 ing and packaging water for the sale of bottled water under subdivision  
50 two-a of section 15-1503 of this title.

51 25. "Sale of water" means the production, packaging or delivery of  
52 water from a water source or public water supply system in containers or  
53 by any other means in exchange for money or other consideration.

54 26. "Sale of bottled water" means water withdrawn from a water source  
55 or public water supply system and transferred or diverted to a plant or

1 other facility for the sale of water in a container or package of not  
2 more than 5.7 gallons.

3 27. "Spring water" means spring water as defined in 21 C.F.R. 165.110  
4 for bottled water.

5 28. "Watershed" means the watershed of primary rivers and the sub-wat-  
6 ersheds of their tributary streams and creeks.

7 29. "Water main" means a pipe owned or controlled by a supplier that  
8 may convey water to a customer service connection or to a fire hydrant.

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

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

18 § 5. Section 15-1503 of the environmental conservation law is amended  
19 by adding a new subdivision 2-a to read as follows:

20 2-a. Where an applicant for a permit under this section is seeking  
21 such permit for the purposes of withdrawing, taking, removing, divert-  
22 ing, and/or transferring from the waters of the state for the sale of  
23 bottled water the provisions of this subdivision shall apply.

24 a. The department shall not issue a permit pursuant to this section to  
25 a person or entity who proposes to engage in the sale of bottled water  
26 unless all of the following conditions are met:

27 i. Before issuance of such permit, the department shall provide writ-  
28 ten notice of the application for such permit with conditions and  
29 proposed royalty fees as provided in paragraph b of this subdivision, at  
30 least sixty days prior to such approval: to any local unit of govern-  
31 ment, any public water supply system district, authority or department,  
32 any recognized tribal sovereign government, and to the applicant; to be  
33 published in a prominent newspaper with general circulation in the  
34 locale of the water source or supply; and to be posted on the depart-  
35 ment's website in a conspicuous manner. The department may on its own  
36 or upon request of an interested person provide for a public hearing,  
37 which shall be given the same public notice as provided in this subpara-  
38 graph. Such public notice shall provide at least a forty-five day  
39 comment period before issuance of the permit. Upon request of a local  
40 unit of government or recognized tribal sovereign government in which  
41 the water source or supply is located, the department shall meet and  
42 consult with the local unit of government or tribe not less than fifteen  
43 days before issuance of the permit.

44 ii. Before approval and issuance of the permit, the department shall  
45 evaluate, assure, and duly establish that all of the following are met:

46 (A) The applicant has complied with the provisions of this section;

47 (B) The applicant has shown, based on clause (A) of this subparagraph  
48 and all other available information, including public notice, hearing,  
49 participation and comments or consultation with local government, sover-  
50 eign tribes recognized by treaty with the federal government or other  
51 interested persons as required by subparagraph i of this paragraph, that  
52 the diversion, withdrawal and/or transfer of the waters of the state for  
53 the sale of bottled water is substantially in the public interest and  
54 shall not impair the public trust and public health, safety, and  
55 welfare;

1 (C) The applicant has complied with the application and royalty fees  
2 required by paragraph b of this subdivision;

3 (D) Any conditions the department shall have required as a condition  
4 for issuance of the permit for the protection and promotion of the  
5 waters of the state, public trust in such waters, and the public health,  
6 safety, and welfare of citizens and local community.

7 b. i. Before processing an application for a permit under this section  
8 for the purposes of withdrawing, taking, removing, diverting, and/or  
9 transferring from the waters of the state for the sale of bottled water,  
10 an applicant shall pay an application fee of five hundred dollars and a  
11 fee of five thousand dollars or more as determined by the department for  
12 reimbursement of the department's expenses for processing and evaluating  
13 such application.

14 ii. A permittee shall pay a royalty fee for the right to divert, with-  
15 draw, remove and/or transfer the sovereign waters of the state or public  
16 water supply system for purposes of the sale of bottled water in accord-  
17 ance with the following:

18 (A) The permittee shall pay a royalty fee of not less than twenty-five  
19 cents per gallon for the right to withdraw, take and/or transfer the  
20 waters of the state for the sale of bottled water. Subject to public  
21 notice, hearing and comment as provided for in paragraph a of this  
22 subdivision, the department may promulgate a higher fee per gallon based  
23 on a reasonable evaluation and determination of fair and adequate  
24 economic value for the right of sale of bottled water from the waters of  
25 the state.

26 (B) The permittee shall file on the first day of each month, beginning  
27 thirty days after the date of the issuance of the permit, a written  
28 summary and report, with supporting data and information, the total  
29 volume of water withdrawn. The permittee shall pay the royalty fee  
30 required by clause (A) of this subparagraph on a quarterly basis, begin-  
31 ning with the first day of the quarter of the year after the date of the  
32 approval and issuance of the permit. The department may impose a late  
33 fee according to a schedule of fees, payment, or interest established by  
34 the department pursuant to rules promulgated by the department.

35 iii. The department shall deposit the royalty fee collected from each  
36 permittee pursuant to subparagraph ii of this paragraph into the public  
37 water justice fund in accordance with all applicable laws and regu-  
38 lations.

39 iv. The department's expenses, including all reasonable expenses  
40 related to collection and management of fees under this subdivision,  
41 shall be paid and a net royalty fee payment made to the public water  
42 justice fund on a quarterly basis, beginning with the third quarter  
43 after the effective date of this subdivision or the issuance of the  
44 first permit under this subdivision, whichever occurs first.

45 v. Where the water is from a water source that is from the waters of  
46 the state, the net proceeds from each permittee shall be deposited in  
47 the public water justice fund.

48 vi. Where the water is from a public water supply system or water-  
49 works, which withdraws and distributes the waters of the state as a  
50 public service within its lawful territory, the net proceeds from each  
51 permittee shall be deposited in the public water justice fund, and the  
52 department shall allocate an amount up to twenty-five percent of the net  
53 proceeds of the public water justice fund in any calendar year to public  
54 water supply systems, from which the water is withdrawn, taken, diverted  
55 and/or transferred for the purpose of the sale of bottled water.

vii. For the purposes of this subdivision, the term "net proceeds" shall mean net proceeds from royalties under this subdivision, minus costs and expenses.

c. i. In addition to all other requirements of this section, a person or other entity shall not be permitted to withdraw and transfer more than fifty thousand gallons a day for the sale of bottled water as spring water unless it is established by the permittee and determined by the department that:

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

(B) based on the actual data and information established under clause (A) of this subparagraph, the withdrawal and transfer of spring water shall not measurably diminish and impair the flow, level and other physical parameters of the wetlands, creeks, streams, lakes or ponds, fish and other wildlife and plant habitat or the public trust in such features, wildlife and habitat.

ii. Any decision or determination required by this subdivision shall take into account and be conditioned on the potential for, or occurrences of, increased intensity and frequency of weather events due to changes in climate.

§ 6. The environmental conservation law is amended by adding a new section 15-1508 to read as follows:

§ 15-1508. Use of public water justice funds.

The department shall direct the administration of the public water justice fund in accordance with the provisions of subparagraph vi of paragraph b of subdivision two-a of section 15-1503 of this title and section ninety-nine-qq of the state finance law. In directing the administration of such fund, the department shall consult with public water authorities in the state including local water districts and water agencies, as well as environmental justice groups and other environmental justice experts as determined appropriate by the department.

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

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

2. Such fund shall consist of all revenues received by the state, pursuant to the provisions of subdivision two-a of section 15-1503 of the environmental conservation law, including but not limited to all bonuses, rentals, delayed rentals, royalties, penalties or fines for non-compliance collected by, or reserved by, the state under the licenses for the sale of bottled water established pursuant to such title.

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

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

1 (ii) protection, conservation, efficiency, sustainability and cleanup  
2 to assure safe, clean and adequate groundwater and surface water sources  
3 for drinking water and water supplies within the state, including but  
4 not limited to, new technologies, green infrastructure and enhanced  
5 resiliency and adaptability to predict extreme weather events or climat-  
6 ic changes;

7 (iii) protection of public health and individual health needs directly  
8 related to investigation, medical examination and water quality and  
9 medical monitoring; and

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

14 (b) Any interested municipal public water supply department, district,  
15 authority, or local government, or any person who lives within the  
16 territory or is served by a public water supply system may apply for a  
17 grant for one or more of the dedicated purposes of the public water  
18 justice fund under this section. The application, process, public  
19 notice, meetings, and decisions shall be processed by the department.  
20 The department shall apportion and allocate the grants of available  
21 funds in any given hearing in a fair and proportionate manner among  
22 applicants that in the discretion of the department best meets the  
23 intent and dedicated purposes of title fifteen of article fifteen of the  
24 environmental conservation law and any rules or regulations promulgated  
25 thereto; except that there shall be a preference for at least thirty-  
26 five percent of the funds to be distributed to disadvantaged communi-  
27 ties.

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