

[First Reprint]

SENATE, No. 2985

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JUNE 22, 2009

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

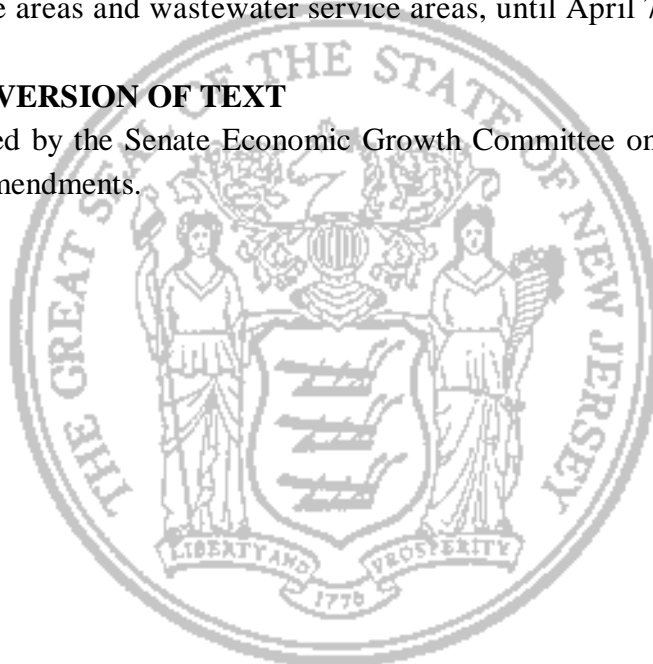
Senator Haines

SYNOPSIS

Extends requirement of wastewater management planning agencies to establish or update wastewater management plans, and extends validity of sewer service areas and wastewater service areas, until April 7, 2012.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on December 14, 2009, with amendments.



(Sponsorship Updated As Of: 1/5/2010)

1 AN ACT concerning wastewater management plans and sewer
2 service area and wastewater service area designations ¹[,
3 creating a Wastewater Planning Oversight Board in the
4 Department of Environmental Protection,]¹ and supplementing
5 P.L.1977, c.75 (C.58:11A-1 et seq.).
6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*
9

10 1. The Legislature finds and declares that:

11 a. On May 21, 2008, the Department of Environmental
12 Protection readopted with amendments the Water Quality
13 Management Planning rules, N.J.A.C.7:15-1.1 et seq., effective July
14 7, 2008, which rules are developed and administered by the
15 department as part of the continuous planning process required
16 pursuant to Sections 208 and 303 of the federal Clean Water Act of
17 1977, Pub.L.95-217, 33 U.S.C. s.1251 et seq., and the “Water
18 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.).

19 b. These Water Quality Management Planning rules and
20 regulations require county governments to prepare and submit to the
21 department wastewater management plans or wastewater
22 management plan updates by April 7, 2009, or where a municipal
23 government assumes the responsibility from the county, by July 7,
24 2009.

25 c. If a county or municipal government fails to meet the
26 applicable deadline, wastewater service areas in wastewater
27 management plans, and sewer service areas in water quality
28 management plans where no wastewater management plan was
29 previously prepared, will be withdrawn.

30 d. In areas where sewer service areas or wastewater service
31 areas are withdrawn, most development projects and activities will
32 be deemed inconsistent with the applicable water quality
33 management plan, which will preclude the issuance of permits or
34 approvals for development projects and activities by the department
35 including projects and activities where municipal, county, and State
36 planning entities have already reviewed and accepted proposed
37 project-specific amendments or revisions to wastewater
38 management plans and water quality management plans.

39 e. Financing available to municipal utilities authorities and
40 sewerage authorities is dependent upon the existence of approved
41 sewer service areas and would be jeopardized if sewer service areas
42 are withdrawn.

43 f. The State and the nation are engulfed in an economic
44 recession that is drastically affecting various segments of the New

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:

¹Senate SEG committee amendments adopted December 14, 2009.

1 Jersey economy, and as a result of the crisis in the real estate
2 finance sector of the economy, real estate developers and
3 redevelopers, including homebuilders, and commercial, office and
4 industrial developers, have experienced an industry-wide decline,
5 including reduced demand, cancelled orders, declining sales and
6 rentals, price reductions, increased inventory, fewer buyers who
7 qualify to purchase homes, layoffs, and scaled back growth plans.

8 g. Financial institutions that lent money to property owners,
9 builders, and developers are experiencing erosion of collateral and
10 depreciation of their assets.

11 h. The construction industry and related trades are sustaining
12 severe economic losses, and the lapsing of government development
13 approvals due to loss of sewer service would, if not addressed,
14 exacerbate those losses.

15 i. County and municipal governments throughout the State are
16 suffering from the national and Statewide economic crisis and are
17 experiencing revenue shortfalls, and given this fiscal crisis, many
18 county and municipal governments may be unable to dedicate the
19 financial and human resources necessary to submit a wastewater
20 management plan or wastewater management plan update to the
21 Department of Environmental Protection by April 7, 2009 or July 7,
22 2009, as the case may be.

23 j. In addition, county and municipal governments have not
24 been provided with all of the information and data in a manner
25 necessary to facilitate the timely submission of these plans, and as a
26 result, large-scale, Statewide withdrawal of sewer service areas and
27 wastewater service areas may occur.

28 k. The reconciliation of State and local data and mapping is a
29 very time consuming and complex process that involves all levels of
30 government.

31 l. The withdrawal of wastewater service areas on a Statewide
32 basis would have a severe negative economic impact and would
33 further exacerbate the current economic recession, precluding
34 development projects and activities, which would otherwise
35 generate jobs, act as sources of fee generating activities for
36 sewerage authorities and other public and private utilities, and act
37 as a source of tax and other revenues. Such an occurrence would
38 hamper the State's ability to recover from the economic recession,
39 slowing job creation and redevelopment that are normally a source
40 of revenue, increasing the revenue shortfall in the State's budget,
41 and further hampering the State's ability to provide for the general
42 welfare needs of its residents.

43 m. Further, many areas are proposed for withdrawal from future
44 sewer service areas, although the areas are within current sewer
45 service areas and are based upon sound local planning decisions.
46 There is currently no procedure in place to notify the affected
47 property owners, and the removal of property from current sewer

1 service areas will diminish property values and affect local tax
2 revenues.

3 n. It is the purpose of this act to ameliorate the procedural
4 problems of the readopted Water Quality Management Planning
5 rules, as evident in the ongoing implementation of these rules by the
6 department, counties and municipalities. However, it is not the
7 intent of this act to affect the substantive aspects of the Water
8 Quality Management Planning rules, or the intent or purposes of
9 any of the underlying statutory authorities, including the Water
10 Quality Planning Act and the federal Clean Water Act.

11 o. It is also the purpose of this act, and essential to the public
12 good given the present unfavorable economic conditions, to defer
13 the additional economic burden on county and municipal
14 governments and to prevent the catastrophic economic impacts that
15 would occur in connection with large-scale, Statewide withdrawal
16 of wastewater service areas, by providing additional time for county
17 and municipal governments to prepare and submit a wastewater
18 management plan or a wastewater management update to the
19 Department of Environmental Protection and maintaining the
20 validity of sewer service areas and wastewater service areas during
21 this additional time period.

22

23 2. As used in this act:

24 “Department” means the Department of Environmental
25 Protection.

26 “Extension period” means the time period beginning on April 7,
27 2009 and ending on April 7, ‘**[2011]** 2012’.

28 “Sewer service area” means the land area identified in an
29 areawide water quality management plan from which wastewater
30 generated is designated to flow to a domestic treatment works or
31 industrial treatment works.

32 “Wastewater management plan” means a written and graphic
33 description of existing and future wastewater related jurisdictions,
34 wastewater service areas, and selected environmental features and
35 treatment works.

36 “Wastewater management planning agency” means a
37 governmental unit that has responsibility to prepare, submit, and
38 periodically update a wastewater management plan pursuant to the
39 department’s rules and regulations.

40 “Wastewater service area” means a sewer service area, a general
41 service area approved for wastewater facilities with planning flows
42 of less than 20,000 gallons per day which discharge to groundwater,
43 and a general service area for wastewater facilities with planning
44 flows of less than 2,000 gallons per day which discharge to
45 groundwater as designated in any wastewater management plan or
46 water quality management plan.

47 “Water quality management plan” means a plan prepared
48 pursuant to Sections 208 and 303 of the federal Clean Water Act of

1 1977, Pub.L.95-217, 33U.S.C. s.1251 et seq., and the “Water
2 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.), and
3 includes Statewide, areawide and county water quality management
4 plans as defined by the Department of Environmental Protection in
5 the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et
6 seq.

7
8 3. a. Notwithstanding any other law, or rule or regulation
9 adopted pursuant thereto, to the contrary, the time period within
10 which a wastewater management planning agency shall prepare and
11 submit to the department a wastewater management plan or
12 wastewater management plan update pursuant to the Water Quality
13 Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by
14 the department effective July 7, 2008, is extended for the duration
15 of the extension period.

16 b. All wastewater service area designations, including all sewer
17 service area designations in portions of areawide water quality
18 management plans where no wastewater management plan was
19 previously prepared, in effect at any time during the extension
20 period shall remain in effect until such time as the applicable
21 wastewater management planning agency adopts a new, revised, or
22 updated wastewater management plan, as applicable, and the plan is
23 approved by the department.

24 c. All wastewater service area designations, including all sewer
25 service area designations in portions of areawide water quality
26 management plans where no wastewater management plan was
27 previously prepared, withdrawn pursuant to the Water Quality
28 Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by
29 the department effective July 7, 2008, prior to the date of enactment
30 of this act shall be reinstated and shall be in effect during the
31 extension period.

32
33 4. During the extension period, the department shall, within 90
34 days after receipt of a complete application, review and approve site
35 specific or project specific amendments or revisions to wastewater
36 management plans and water quality management plans submitted
37 by or on behalf of any party, including but not limited to a county,
38 municipality or individual landowner. For any request pending
39 with the department on the date of enactment of this act, the
40 department shall complete review of the request within 90 days
41 after the date of enactment of this act.

42
43 5. Nothing in this act shall preclude a wastewater management
44 planning agency from preparing and submitting a wastewater
45 management plan or a wastewater management plan update to the
46 department during the extension period pursuant to the “Water
47 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.) and the
48 Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et

1 seq., adopted by the Department of Environmental Protection,
2 effective July 7, 2008.

3
4 6. a. If the department provides sewer service area mapping,
5 data, models, or any other information to a wastewater management
6 planning agency as the basis for, or in connection with, the update
7 of a wastewater management plan, and the materials propose,
8 recommend or otherwise contemplate the removal of real property
9 from a sewer service area, the department or the applicable
10 wastewater management planning agency shall provide written
11 notice of the proposed removal of real property from the sewer
12 service area to the person or entity identified on the municipal tax
13 record as the owner of the real property.

14 b. (1) No real property may be removed from a sewer service
15 area or wastewater service area, as applicable, approved by the
16 department and in effect on July 7, 2008, unless the department or
17 the applicable wastewater management planning agency provides
18 written notice, by certified mail, return receipt requested, of the
19 proposed removal of real property from the sewer service area or
20 wastewater service area, as applicable, to the person or entity
21 identified on the municipal tax record as the owner of the real
22 property.

23 The notice provided to the property owner pursuant to this
24 subsection shall provide detailed information specifying the reason
25 the real property is proposed for removal from the sewer service
26 area or wastewater service area, as applicable, including but not
27 limited to any mapping, data, models, or other information that may
28 have been provided by the department to the applicable wastewater
29 management planning agency.

30 (2) Upon receipt of written notification pursuant to this
31 subsection, the owner of the property shall have 30 days to respond
32 to the department and the applicable wastewater management
33 planning agency and provide information as to why the property
34 should not be removed from the sewer service area or wastewater
35 service area, as applicable, including any documentation regarding
36 the current status of the property and any applicable permits.

37 (3) If, after receipt of a response by the owner of the property,
38 the department and the applicable wastewater management planning
39 agency intend to pursue removal of the property from the approved
40 sewer service area or wastewater service area, as applicable, the
41 owner of the property may appeal the decision to the Office of
42 Administrative Law. Upon receipt, the Office of Administrative
43 Law shall assign the request to an administrative law judge for a
44 hearing. The provisions of the "Administrative Procedure Act,"
45 P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to hearings and
46 appeals pursuant to this section.

47 (4) If the department and the applicable wastewater management
48 planning agency do not receive a response from the owner of the

1 property within 30 days after the owner's receipt of the certified
2 notice as evidenced by the return receipt, the department and the
3 applicable wastewater management planning agency may proceed
4 with the removal of the property from the sewer service area or
5 wastewater service area, as applicable, in accordance with the
6 applicable provisions of the Water Quality Management Planning
7 rules, N.J.A.C.7:15-1.1 et seq.

8
9 7. a. Notwithstanding any other law, or rule or regulation
10 adopted pursuant thereto, to the contrary, a sewer service area shall
11 include all property for which at least one of the following
12 approvals were issued prior to the applicable wastewater
13 management planning agency adopting a new, revised, or updated
14 wastewater management plan, as appropriate, and that plan is
15 approved by the department:

16 (1) preliminary or final site plan approval, preliminary or final
17 subdivision approval, municipal building or construction permit, or
18 general development plan approval, issued pursuant to the
19 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

20 (2) a treatment works approval issued pursuant to the "Water
21 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); or

22 (3) a New Jersey Pollutant Discharge Elimination System permit
23 issued pursuant to the "Water Pollution Control Act," P.L.1977,
24 c.74 (C.58:10A-1 et seq.).

25 b. If a sewer service area within a new, revised or updated
26 wastewater management plan, as appropriate, does not include
27 property as provided in subsection a. of this section, the affected
28 property owner or any other interested party, including but not
29 limited to a contract purchaser for the property, may submit a
30 written request to the wastewater management planning agency,
31 with a copy to the department, to include the property within the
32 sewer service area through an administrative correction. If at least
33 one of the approvals identified in subsection a. of this section is
34 valid as of the date of the request, the wastewater management
35 planning agency shall revise the sewer service area to include the
36 property in question and shall submit a notice of administrative
37 correction of the sewer service area to the department. The
38 department shall issue written approval of the corrected sewer
39 service area no later than 30 days after receipt of the submission by
40 the wastewater management planning agency, or the request shall
41 be deemed automatically approved.

42 c. In addition to environmental factors, the department and the
43 wastewater management planning agency shall consider the
44 following factors when making a determination regarding the
45 inclusion of property in, or the exclusion of property from, a sewer
46 service area under any new, revised or updated wastewater
47 management plan:

48 (1) the zoning of the property;

1 (2) the existing development and land use surrounding and in
2 the vicinity of the property;

3 (3) the existing infrastructure and availability of utilities;

4 (4) any affordable housing obligations;

5 (5) redevelopment opportunities and objectives;

6 (6) the designation of the property pursuant to the State
7 Development and Redevelopment Plan adopted pursuant to
8 P.L.1985, c.398 (C.52:18A-196 et al.); and

9 (7) any prior or existing development or partial development on
10 or associated with the property.

11
12 8. During the extension period, the department shall continue
13 to provide needed mapping, models, and staff support for the
14 preparation and review of wastewater management plans, updates
15 and amendments thereto.

16
17 9. During the extension period, every wastewater management
18 planning agency shall be required to submit written reports to the
19 department regarding the wastewater management planning
20 agency's progress in preparing a wastewater management plan or
21 wastewater management plan update.

22
23 10. The department shall, within 30 days after the date of
24 enactment of this act, place a notice in the New Jersey Register
25 implementing the provisions of the extension period in conformance
26 with section 3 of this act.

27
28 '11. a. There is established the Wastewater Planning
29 Oversight Board in, but not of, the Department of Environmental
30 Protection. The board shall consist of 11 members as follows:

31 (1) the Commissioner of Environmental Protection, or a
32 designee;

33 (2) the Smart Growth Ombudsman appointed pursuant to section
34 2 of P.L.2004, c.89 (C.52:27D-10.3); and

35 (3) nine members of the public, who are residents of the State,
36 to be appointed by the Governor with the advice and consent of the
37 Senate as follows:

38 (a) two members of the New Jersey County Planners
39 Association;

40 (b) two representatives or members of the building industry with
41 recognized expertise and specialization in wastewater management
42 planning issues;

43 (c) two representatives of the environmental community with
44 recognized expertise and specialization in wastewater management
45 planning issues;

46 (d) one representative of a municipal utilities authority or a
47 sewerage authority located in the State; and

1 (e) two representatives of the public having no affiliation with
2 any of the other representative members appointed pursuant to this
3 paragraph.

4 b. The board shall evaluate, study and review the accuracy,
5 validity, feasibility, and practicability of sewer service area
6 mapping, data, models, or any other information provided by the
7 department to wastewater management planning agencies as the
8 basis for, or in connection with, the creation of a wastewater
9 management plan, and to make recommendations to wastewater
10 management planning agencies based on this review.

11 c. The members of the board shall serve without compensation,
12 but may be reimbursed for necessary expenses incurred in the
13 performance of their duties, within the limits of funds appropriated
14 or otherwise made available to the board for its purposes.

15 d. Any vacancy in the membership of the board shall be filled
16 in the same manner as the original appointment.

17 e. The board shall organize as soon as possible after the
18 appointment of its members, and shall select annually a chairperson
19 from among its members and a secretary who need not be a member
20 of the board.

21 f. A majority of the membership of the board shall constitute a
22 quorum for the transaction of business. Action may be taken by the
23 board upon the affirmative vote of a majority of the full membership
24 of the board.

25 g. The board shall be entitled to the assistance and service of
26 the employees of any State, county or municipal department, board,
27 bureau, commission, authority or agency as it may require and as
28 may be available to it for its purposes, and to employ stenographic
29 and clerical assistance and to incur traveling or other miscellaneous
30 expenses as may be necessary in order to perform its duties, within
31 the limits of funds appropriated or otherwise made available to it
32 for its purposes. The department shall provide primary staff
33 support for the board.

34 h. The board shall meet monthly or at the call of the
35 chairperson of the board or when requested by any three or more
36 members of the board.】¹

37
38 ¹11. The State Planning Commission, established pursuant to
39 section 2 of P.L.1985, c.398 (C.52:18A-197), shall evaluate, study
40 and review the accuracy, validity, feasibility, and practicability of
41 sewer service area mapping, data, models, or any other information
42 provided by the department to wastewater management planning
43 agencies as the basis for, or in connection with, the creation of a
44 wastewater management plan, and shall make recommendations to
45 wastewater management planning agencies based on this review.¹

46
47 12. This act shall take effect immediately.