



March 3, 2011

Dear Mayor:

On February 22nd, Governor Chris Christie presented his fiscal 2012 state budget proposal to the members of the Legislature and residents of New Jersey. The \$29.4 billion proposed spending plan contains spending reductions which will impact us all.

The Assembly Budget Committee will conduct a public hearing on the campus of Montclair State University on Wednesday, March 16, 2011 at 9:30am. This will be the only North Jersey public hearing for residents to voice their concerns specific to education, higher education, and local governments, in Governor Christie's proposed FY2012 NJ State Budget. We encourage all to participate in this exercise. Those who want to testify can register online at www.njleg.state.nj.us. Click on "online registration" under the "Budget Public Hearings" heading. Or register by phone by calling the Legislative Budget and Finance Office at (609) 292-1170.

Please do not hesitate to contact me directly if I can be of assistance.

Sincerely,

Shivaun Gaines
Director

2/14

**NOTICE OF HEARING
BOARD OF ADJUSTMENT**

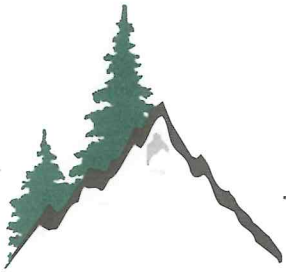
PLEASE TAKE NOTICE that **Steven J. Halasz**, owner of property at **312 Linden Avenue**, Montclair, New Jersey, filed an application with the Montclair Board of Adjustment for a variance associated with the proposed construction an enclosed entranceway onto the front of the dwelling. The property is located in the R-1 One-Family Zone and is designated on the Township Tax maps as Lot 102 in Block 3904. A variance is requested from **Montclair Code Section 347-45B(1)** in that a front yard setback less than the average front yard setback of existing dwellings on Linden Avenue is proposed. The applicant also requests any other variances that are required.

TAKE FURTHER NOTICE that the Board of Adjustment will meet at 7:30 p.m. on Wednesday, March 16, 2011, in the Council Chamber, First Floor of the Municipal Building, 205 Claremont Avenue, Montclair, New Jersey, at which time opportunity will be given to all those in interest to be heard and at which time the Board may approve, modify and approve or deny the application.

TAKE FURTHER NOTICE that all pertinent maps and accompanying documents are on file in the office of the Secretary of the Board, 205 Claremont Avenue, and shall be available for inspection weekdays from 8:30 a.m. to 4:30 p.m.

William F. Harrison, Jr.
Chairman

5114



First Mountain Arboriculture, LLC
Horticultural Consulting ▼ Urban Forestry

ISA Certified Arborist NJ-0856A
New Jersey Certified Tree Expert #512

STEPHEN SCHUCKMAN

Cell: 973-494-1296
smschuckman@verizon.net

2 March 2011

Mr. Michael Rohal
Borough Administrator
Borough of Glen Ridge
825 Bloomfield Avenue
Glen Ridge, New Jersey 07028

Dear Mr. Rohal:

Effective immediately, I resign from my position as Borough Forester.

I have enjoyed my years serving the Borough, and I am proud of the work we completed. I wish the Borough of Glen Ridge continued success with its shade tree program.

Very Truly Yours,


Stephen Schuckman

Cc: Michael Zichelli
Jay Weisenbach

3/11/11

**Opposition to Proposed Legislation
Assembly Bill A-2514 / Companion Bill S-359
And Assembly Bill A-2361 / Companion Bill S-360
Which Would Subject All Actions Of
The North Jersey District Water Supply Commission
Which is Not Part of the Executive Branch of State Government
To Veto Control By Any Governor**



*North Jersey District Water Supply Commission
September 2010*

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ALBERT MANZO
PATERSON, NJ



ONE F.A. ORECHIO DRIVE
WANAQUE, NJ 07465
973-835-3600 FAX: 973-835-6701

E-Mail: commissionoutreach@njdwsc.com

MICHAEL E. RESTAINO
EXECUTIVE DIRECTOR

COLLEEN DeSTEFANO
DEPUTY EXECUTIVE DIRECTOR

ANGELO M. VALENTE
COMMISSION SECRETARY

September 2010

**RE: SENATE BILLS S-359 AND S-360 AND ASSEMBLY BILLS A-2514 AND A-2361
WOULD ESTABLISH A GOVERNOR'S VETO POWER OVER ALL ACTIONS
OF THE NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION**

Dear Senator:

Enclosed for your review is a copy of the written testimony submitted by our Commission in opposition to Senate Bills S-359 and S-360 and Assembly Bills A 2514 and A2361(the "Bills")

The North Jersey District Water Supply Commission (the "Water Commission") is legally an Agent for and Trustee of its Contracting Municipalities. In that capacity, the Commission opposes the Bills. The Bills propose major changes to our Commission's legislation, N.J.S.A. 58: 5-1 et seq., which would undermine municipal home rule through creation of executive branch gubernatorial veto power over all Commission actions. The Bills do not just unduly aggregate power in a Governor, but also directly conflict with the separation of powers provisions of the State Constitution. Here are some of the details:

- In 1916 both the North and South Jersey District Water Supply Commissions were established by Statute but both those Water Commissions could only be formed and become legally operative at the request of contracting municipalities pursuant to Agreements entered into only by municipalities.
- The South Jersey District Water Supply Commission was never formed.
- The North Jersey District Water Supply Commission was established in 1916 pursuant to an agreement entered into by its contracting partner municipalities to allow those municipalities regional economies of scale in developing, operating and managing their municipal drinking water supplies. Originally founded by the cities of Newark, Passaic, Paterson, Clifton, Montclair, Bloomfield, Kearny and Glen Ridge, the Water Commission, carrying out its constitutional duties, operates strictly in accordance with the terms of its legally binding contracts with contracting partner municipalities for the Regional development and operation of municipal water supplies.
- In 1975, the Water Commission, representing its contracting municipalities, entered into a joint venture contract with Hackensack Water Company (now United Water) to develop and fund the 250 million gallons per day Wanaque South Water Supply Project. The Commission now operates this \$150 million project in accordance with its contracts with the Wanaque South municipalities and its unique public/private partnership, a Joint Venture Agreement with a private utility, United Water. With today's contracts and United Water's Joint Venture agreement, Commission water is delivered to approximately 4 million citizens of New Jersey. The contracting municipalities have always paid their share of the cost to construct the Commission's water supply facilities. Today all the Commission costs are paid

by its contracting municipalities and its contractual joint venture/partner in the Wanaque South Project, United Water.

- The North Jersey District Water Supply Commission is not currently and never has been a State Authority nor has the Water Commission ever received its yearly operating funds from the State. The Commission is a regional instrumentality of its municipal partner members.
- It is definitely not in the best interest of its rate paying public partners to eliminate the contracting municipalities' existing oversight involving their water supply budgets, overdraft rates, plant improvement projects and now, through an executive veto, put "all" oversight functions under the concentrated power of any Governor. The public has a very emotional attachment to its water supply, more so than any other utility. Water literally has the ability to impact people's lives and even the "threat of contamination" must be addressed as if the Commission's own water supply was actually contaminated.
- It is not surprising that the Commission is not part of state government, since the Commission receives no State funds; its expenses are paid by its contracting municipalities (N.J.S.A. 58:5-12, 5-16, 5-22, 5-23, 5-26, 5-40) and all budgetary water rates are paid through municipal assessments and the United Water Joint Venture project. The Commissioners are not paid by the State and the Commission's employees are not members of Civil Service but solely employees of the Commission, paid not by the State but by the Commission.
- The courts have ruled that the Water Commission is not a State entity but rather an "amalgam", the only one of its kind in New Jersey, and as such is not and cannot be part of the Executive Branch of State government. For it to be so, or treated as if it were a state agency, would be inconsistent with its legal status as an agent of and trustee for all its Contracting Municipalities.
- Our Regional Water Commission as an independent entity, with its own corporate existence and the right to sue and be sued will encounter legal situations whereby the Commission will find itself and the interests of its municipalities directly adverse to the State of New Jersey, such as in current safe yield litigation with the New Jersey Department of Environmental Protection and other legal points involving water supply permits, regional drought interconnection projects, public/private joint ventures, flood control projects, Passaic River pollution, executive orders, etc.
- The Bills' unconditional veto provision would enable a Governor to prevent any and all actions, even those in full compliance with existing law and municipal contractual agreements and obligations, some of which originated almost 100 years ago. By doing so, a Governor, through vetoes and executive orders, could in effect change the Commission's enabling statutes. But only the Legislative Branch can modify or repeal a law. A Governor's ability to modify and veto is over proposed laws, not laws already enacted. The Constitution does not permit a Governor to negate or change existing laws and legal municipal contracts and obligations at will through vetoes or executive orders, and the Legislature cannot constitutionally delegate that power to any Governor.
- Our Water Commission's statutory language is contrary to any implication that a Governor in effect sits as a "super" Commissioner of the North Jersey District Water Supply Commission. The Commission is an independent regional water commission that is not allocated to any department in the Executive Branch of State Government. Statutory intent is that our Board of Commissioners discharge their duties for the benefit of its contracting municipalities and joint venture partners, independent of State Executive control.

- While the Commission has the authority to issue bonds, it does not incur any indebtedness on behalf of the State of New Jersey (N.J.S.A. 58:15-29) and its bonds are therefore not a "debt or liability of the State...either legal, moral or otherwise..." (N.J.S.A. 5:5-51).
- The State Constitution, in Articles 4, 7 and 11, provides that provisions of law relating to municipalities "shall be liberally construed in their favor." Giving a Governor unqualified veto power over every action by the Commission, would radically change the manner in which the Commission functions on behalf of its contracting municipalities. It would shift the power over the municipalities' water supplies from their legal Agent and Trustee, the Commission, to the Governor. That would disrupt, if not totally frustrate the whole scheme for implementation of municipal water policy as addressed by the Legislature in the statutes relating to the Water Commission. The placing of such power in the hands of any Governor is incompatible with applicable provisions of the New Jersey Constitution and established legal precedent relating to home rule and municipal oversight.

The New Jersey Supreme Court in the 1982 *General Assembly* case discussed the practical effects of such veto power. While the Court was speaking about the corrosive effect of a legislative veto provision, the effect of a gubernatorial veto would be no different:

Broad legislative veto power deters executive agencies in the performance of their constitutional duty to enforce existing laws. Its vice lies not only in its exercise but in its very existence. Faced with potential paralysis from repeated uses of the veto that disrupt coherent regulatory schemes, officials may retreat from the execution of their responsibilities. They will resort to compromises with legislative committees and to drafting rules that the current Legislature will find acceptable.

Senator Weinberg's Bill S-360 and companion Bill A-2361 stands in stark conflict with the governing Open Public Meetings Act (OPMA). The deadline provisions of OPMA require that a prerogative writ lawsuit must be brought within 45 days after the action sought to be voided had been approved and made public.

OPMA already requires minutes to be made available to the public, but also allows minutes to be withheld pursuant to confidentiality provisions of the OPMA. The Commission takes actions, such as personnel matters, in properly closed executive sessions and Bills S-360 and A-2361 do not allow for such legal personnel issues involving suspensions, terminations, etc.

Leading the way in record keeping requirements, the Commission has transcribed and maintained public minutes for almost 100 years – a fact that is contrary to Senator Weinberg's misrepresentation of the Commission as a "shadow government". In fact the Commission is in the bright light of public scrutiny with budget hearings and contracts for goods and services subject to open, public and competitive bidding, .

If Bills S359/A2514 and/or the related S360/A2361 "State Authorities Reform Act," with their gubernatorial veto provisions, are approved, the Commission in one stroke would become captive to the wishes, whims and conflicting demands of any and all Governors, rather than the interests of the municipalities it is legally required to serve. Policy would be guided not by the Commission's specialized water supply expertise, its long-range and knowledgeable planning, or its one century of regional experience in dealing with the water supply requirements of its municipal partners, but rather by what an incumbent Governor wishes. Such a result would not just be radical and misguided, but also unconstitutional.

Our Regional Water Commission, acting in the interest of its local municipal partners, has in the past, is now, and may, in the future, find itself directly adverse to the State of New Jersey and adoption of Senate Bill No. 359, Assembly Bill No. 2514, Senate Bill 360 or Assembly Bill No 2361,

giving any Governor Veto power over any and all legal Commission actions, and classifying the Commission as a "State Authority" clearly conflicts with the legal, fiduciary and contractual responsibilities of the Commission to its contracting municipalities and joint venture partners.

All legislators must perform their duties with competence and the highest standards of honesty and integrity particularly when making unsupported statements as matters of fact and not mislead the public or inflame public opinion with heated and unsupported rhetoric.

As a member of the Senate and sponsor of S-359, Senator Weinberg should be aware of the ethical constraints of using the credibility of the Senate in combination with her testimony and press release statements that are misleading in a material respect as they pertain to the Commission.

The implications of Senator Weinberg's Press Release (attached) that "unspecified" waste and abuse by our Water Commission somehow has hurt the public is belied by the fact that our Commission's water rates for 2010 are the lowest in the State of New Jersey, and moreover were decreased from the year before despite higher direct costs for energy, insurance, etc. Obviously Senator Weinberg's reference to "little or no cost controls" does not apply to the Water Commission but may apply to other BPU Regulated Utilities as shown on the attached Public vs. Private Rate Comparison Chart.

I presume Senator Weinberg and members of the State Government Committee were motivated by various concerns relating to the Passaic Valley Sewerage Commission. Be that as it may, the Water Commission has an outstanding record of fiscal responsibility and operating efficiencies, with an equally outstanding record of continually delivering high-quality water at the lowest cost with no major disruptions to millions of New Jersey citizens including corporate giants such as Anheuser Busch, which uses 6-7 million gallons per day for Budweiser, Bud Light, Michelob Ultra, Rolling Rock, etc. and other business facilities essential to the economic life of New Jersey's municipalities, such as Newark's Liberty International Airport.

The Legislature should carefully reconsider Senate Bill S-359, Assembly Bill A-2514, Senate Bill S-360 and Assembly Bill A-2361 and not enact these Bills because they would place inordinate power in the hands of a Governor in violation of several provisions of the State Constitution, including separation of powers and home rule and any veto would be inconsistent with the letter and intent of the numerous existing statutes and Commission contracts. Enactment of the Bills would fundamentally change the character and functioning of the Water Commission, which has performed well for nearly a century; rendering it beholden to any incumbent Governor in every respect, with veto power over any and all Commission actions rather than to the Commission's legal responsibilities involving contracting/partner municipalities and United Water Joint Ventures.

As a critical infrastructure, the North Jersey District Water Supply Commission is an important part of the systems and assets so vital to our contracting cities and towns that any disruption, incapacity or destruction of such has a debilitating impact on our contracting municipalities and our joint venture partners. Quick and decisive action involving public health and safety would be compromised by veto paralysis and politicization of any action relating to the basic service of supplying water to the public.

As a municipal trustee and partner in supplying a life sustaining natural resource, we thank you for allowing us to present our Commission's opposing views on the pending Bills. The Bills threaten to disrupt, interfere with and frustrate the Water Commission's ability to do its job effectively and efficiently as it serves approximately 4 million citizens of its contracting cities, towns and joint ventures, and more over in a way that make the Bills patently unconstitutional. We urge you to protect the public health and safety, their economic vitality and your constituents' way of life by opposing S-359, S360, A2514 and A2361.

COMMISSIONERS

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CHAIRMAN
NUTLEY, NJ

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VICE CHAIRMAN
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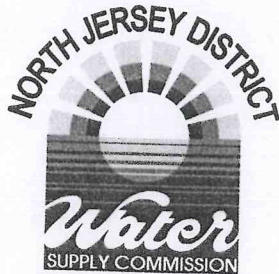
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ONE F.A. ORECHIO DRIVE
WANAQUE, NJ 07465
973-835-3600 FAX: 973-835-6701

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DEPUTY EXECUTIVE DIRECTOR

ANGELO M. VALENTE
COMMISSION SECRETARY

September 2010

Honorable Senator Loretta Weinberg
545 Cedar Lane
Teaneck, NJ 07666

Re: Response to the Numerous Misstatements of Fact and Distortions by Senator Loretta Weinberg About The North Jersey District Water Supply Commission and Senate Bill S-359 – Establishes Governor's Veto Power Over All Actions of the North Jersey District Water Supply Commission

Dear Senator Weinberg:

I am writing on behalf of the North Jersey District Water Supply Commission ("Water Commission") to address statements you made in a press release (copy attached) issued just after the Senate State Government Committee approved and released your Bill, S-359, which would give Governors' veto power over all actions of the Water Commission. This measure would give the State Executive complete unprecedented power over a regional authority which is not and never has been a State agency. Unfortunately, you took the occasion to make numerous misstatements, mischaracterizations, and baseless accusations about the Water Commission. Some of those statements were also made in a public hearing on the Bill. On the assumption that you made these statements because you were misinformed as to the true facts, I will outline the correct information below. The Water Commission respectfully asks that you retract the misstatements you made at your earliest opportunity, so that they will not mislead your fellow legislators or the general public.

You suggest that the Water Commission and the other entity covered by the Bill, the Passaic Valley Sewerage Commission (PVSC), are really "taxpayer-funded State entities" that are operating "under the guise of regional utilities commissions." I do not speak for the PVSC, which has no relationship whatsoever with the Water Commission. But the Water Commission certainly is not a "State entity," and definitely is a regional commission. In fact, the Bill itself, which you sponsored, states that it "establishes [the] Governor's authority over approval of minutes of certain *regional commissions*." As its governing law indicates, the Water Commission only came into being at the request of municipalities joining together to opt for a regional commission to provide for their water supply needs. The Water Commission exists and operates as an agent and trustee of its contracting-member cities and towns. Those municipalities are the Water Commission's legal oversight authority—not a State Executive. Not surprisingly, therefore, the Water Commission has never been allocated by the Legislature to a principal Department of the Executive Branch, which would have been required by the Constitution if it really were a State agency.

In that regard, how can your Bill be constitutional? Not only would it take control of the Water Commission away from its constituent municipalities and give it to State government, violating principles of home rule, but it would give the State Chief Executive absolute power over an entity outside of the Executive Branch of State government, violating the principle of separation of powers. Not to mention the Commission's need to work efficiently and flexibly to maintain a reliable and safe water supply for consumers and businesses would be impeded if every action it took had to await approval by the incumbent Governor.

Discussing practical affects of veto power, the State Supreme Court in the 1982 General Assembly case said... "Broad legislative veto power deters executive agencies in the performance of their constitutional duty to enforce existing laws. Its vice lies not only in its exercise but in its very existence. Faced with potential paralysis from repeated uses of the veto that disrupt coherent regulatory schemes, officials may retreat from the execution of their responsibilities." While the court was speaking about the corrosive effect of a legislative veto provision, the effect of a gubernatorial veto would be no different.

Quick and decisive action involving public health and safety would be compromised by veto paralysis and politicization of any action relating to the basic service of supplying water to the public. The public has a very emotional attachment to its water supply, more so than any other utility. Water literally has the ability to impact peoples' lives and even the "threat of contamination" must be addressed as if the Commission's water supply was actually contaminated.

Your reference to "tax-payer funded" is misleading, as is your statement: "By giving the Governor veto power over the Water Commission's minutes, we're ultimately giving the taxpaying public a voice in how their money is being spent." The Water Commission is not funded by the State of New Jersey, nor does the State guarantee any money the Commission borrows. Commission bonds are not a debt or liability of the State (NJSA 58:15-29). Rather, its operations are funded by its contracting municipalities, pursuant to an approved budget and based on each town's water use. Each member municipality participates in the Water Commission strictly in accordance with the terms of legally binding "contracts" that are approved by the municipal governing bodies at public meetings through ordinances and resolutions, including hearings on public water assessments due each calendar quarter. Additionally, all meetings of the Water Commission are public and members of the public can attend and be heard.

Thus, not only does giving a Governor veto power over Commission actions not give the "taxpaying public a voice in how their money is spent," it does the opposite. In effect, it allows the State Executive to override - for any reason or no reason, without consulting with the affected "taxpaying public" or holding any hearings - all Commission actions and obligations that were previously approved after public hearings at the municipal and/or Commission level. The only exception in the Bill is for actions related to municipal bonding. Everything else our regional Water Commission does, even when in full compliance with existing 100 year old law and municipal contracts, would be held hostage to the unconstrained dictatorial aspects of veto power, regardless of the "voice" of the taxpaying public who are part of the Water Commission's partner municipalities.

Nor is there any demonstrated need for such a dubious method of protecting the taxpaying public. You refer to "out-of-control waste and abuse" and a "history of questionable spending practices." You mention "padded public contracts awarded to campaign donors." In fact, you go so far as to call the Water Commission one of the "poster children for government waste and abuse in New Jersey." These statements are over-the-top, completely uncalled for, and patently false. You give no specifics as to the Water Commission for these serious charges; you just lump it in with the PVSC. Perhaps that is because the Water Commission has *not* been charged with any "padded public contracts", and has *never* come under fire for overly-generous employee salaries, perks and the like, all of which have always been open for public review. All salary adjustments are implemented through a multi-step process, including regional salary surveys of similar positions in comparable utilities, educational licensing certifications, CPI adjustments, etc.

Moreover, your implication that all this unspecified "waste and abuse" by our Water Commission somehow has hurt the public is belied by the fact that the Commission's water rates for 2010 are the lowest in the State of New Jersey, and moreover actually decreased from the year before despite higher direct costs, such as for energy, insurance, etc. Obviously, your reference to "little or no cost controls" does not apply to the Water Commission, but may apply to other BPU regulated utilities as shown on the attached rate comparison chart. The chart's public vs. private water utility rate comparison accurately reflects that it is the citizens of New Jersey, the "tax-paying public" who, through their water rates, also contribute to each of the private water utilities' average CEO salaries of over \$1 million annually.

In keeping with the colorful tone of your press release, you refer to the Water Commission as part of a "shadow government," that has to be "dragged kicking and screaming into the bright light of public scrutiny..." Not so. In reality, the Water Commission has held its meetings in public and published the minutes of its meetings since it was formed nearly 100 years ago, long preceding the Open Public Meetings Act, with which it complies in all respects. The Commissioners and top-level Commission executives complete all required financial disclosure forms and undergo rigorous ethics training. All Commission contracting municipalities have an opportunity to meet with Commission financial personnel every year to review and help plan the Commission budget for the following year---long before the Commissioners vote at the public Budget Hearing. Audits of the Commission's finances mandated by law are done annually which are forwarded to all contracting municipalities and the Commission's bond underwriters for their review. All contracts for goods and services over a statutorily-prescribed minimum amount are subject to open, public and competitive bidding.

I presume you and members of the State Government Committee were motivated by various concerns relating to the PVSC. Be that as it may, the Water Commission has an outstanding record of fiscal responsibility and operating efficiencies, with an equally outstanding record of continually delivering high-quality water at the lowest cost with no major disruptions to millions of New Jersey citizens including corporate giants such as Anheuser Busch, which uses 6-7 million gallons per day for Budweiser, Bud Light, Michelob Ultra, Rolling Rock, etc., and numerous other business facilities essential to the economic life of New Jersey's municipalities, such as Newark's Liberty International Airport.

As a Critical Infrastructure, the North Jersey District Water Supply Commission is an important part of the systems and assets so vital to our contracting cities and towns that the disruption, incapacity or destruction of such has a debilitating impact on our contracting municipalities' and our joint venture partners' public health and safety, their economic vitality and their constituents way of life.

Our Regional Water Commission, acting in the interest of its local municipal partners, has in the past, is currently and may in the future find itself directly adverse to the State of New Jersey including legal points involving DEP litigation, municipal contractual issues and budgets, water additive accountability, safe yield permits, regional drought interconnection projects, flood control projects, Passaic River pollution, executive orders, etc. Adoption of Senate Bill S-359, giving any Governor veto power over any and all legal Commission actions, and classifying the Commission as a "State Authority" clearly conflicts with the legal, fiduciary and contractual responsibilities of the Commission to its contracting municipalities and joint venture partners.

Bill S-359 (companion Bill A-2514) threatens to disrupt the protection of the Commission's water supply facilities and the health, safety and welfare of the public and interfere with the Water Commission's ability to do its job effectively and efficiently as it serves approximately 4 million citizens of its contracting towns, cities, and joint ventures, and moreover in a way that makes the Bill patently unconstitutional. I hope you will reconsider your Bill. But whether you do so or not, you clearly have a legal and ethical responsibility to state the true facts and not mislead or inflame public opinion with heated and unsupported rhetoric. On behalf of the Commission, I must demand that you retract the above-discussed statements in your press release, and correct the public record so that your proposed legislation will be based on the true facts.

Thank you for your attention to this serious matter.

Very truly yours.

**NORTH JERSEY DISTRICT
WATER SUPPLY COMMISSION**



Michael E. Restaino
Executive Director

MR:rm

Enclosures

pc: Honorable Members of the Senate
Honorable Members of the Assembly
Honorable Board of Commissioners -NJDWSC
Contracting Municipalities - NJDWSC

WEINBERG MEASURE TO REIN IN OUT-OF-CONTROL AUTHORITIES ADVANCES

Bill Would Give Governor Veto Power Over Agencies' Minutes

TRENTON – A bill sponsored by Senator Loretta Weinberg to give the Governor the authority to approve or veto the minutes of certain regional agencies or commissions to curb out-of-control waste and abuse of taxpayer resources was approved by the Senate State Government Committee today by a vote of 5-0.

"For far too long, the agencies in question have been able to operate with lax oversight and minimal spending controls, and it's past time that the party on the taxpayer's dime comes to an end," said Senator Weinberg, D-Bergen, who has been pushing for reform of the agencies since 2007. "Under this bill, the Governor would be able to go after rampant patronage, waste and abuse of the taxpayers' trust under the guise of regional utilities commissions. By giving the Governor veto power over agencies' minutes, we're ultimately giving the taxpaying public a voice in how their money is being spent."

The bill, S-359, would prohibit any resolution or other action of the North Jersey District Water Supply Commission, the South Jersey District Water Supply Commission (which was authorized by statute, but never established) and the Passaic Valley Sewerage Commission, unless that resolution or action has been affirmed by a vote of the full membership at a meeting in which minutes were taken. Under the bill, these commissions would be required to submit their minutes to the Governor for approval, and the Governor would have 15 days upon receipt of the minutes to take action. If the Governor does not approve or reject the minutes within the 15-day timeframe, any action taken at the meeting in which the minutes were provided would take effect.

Under current law, the Governor has veto power over the minutes of 33 different State commissions and authorities, including the New Jersey Sports and Exposition Authority, the New Jersey Turnpike Authority, the Highlands Water Protection and Planning Council and the Port Authority of New York and New Jersey. Senator Weinberg's bill would bring the North Jersey District Water Supply Commission and the Passaic Valley Sewerage Commission under the same rules and regulations that apply to other taxpayer-funded State entities.

"The North Jersey Water Supply Commission and the Passaic Valley Sewerage Commission have existed as part of the shadow government of agencies and authorities which spend huge amounts of taxpayer funds with little to no transparency or cost controls," said Senator Weinberg. "At a time when New Jersey's government is struggling with a multi-billion dollar deficit, and New Jersey families are struggling to make ends meet with the high cost of State and local taxes, we cannot in good conscience justify such unaccountability and abuse of taxpayer resources any longer. Through this legislation, the shadow government will be dragged kicking and screaming into the bright light of public scrutiny, and wasteful spending will be rejected."

Senator Weinberg noted that both agencies have a history of questionable spending practices. A 2009 New Jersey Comptroller report noted that both agencies spent a combined amount in excess of \$640,000 in public funds in order to lobby the State Legislature in the 2006-2007 legislative session. The agencies have repeatedly come under fire for salaries and employee perks that were overly-generous, and earlier this year, the Passaic Valley Sewerage Commission's Executive Director, Bryan Christiansen, resigned after it was revealed that he was paid an annual salary of \$313,000 – more than \$130,000 more than the Governor earns each year.

"Whether it's excessive pay and benefits for political patronage jobs, holiday parties for staff paid-for out of taxpayer funds, or padded public contracts awarded to campaign donors, the Passaic Valley Sewerage Commission and the North Jersey Water Commission have been the poster children for government waste and abuse in New Jersey," said Senator Weinberg. "However, without the Governor having veto authority over these agencies, we've essentially had no mechanism to end the shenanigans that we all knew were taking place. This bill begins to correct the decades of political patronage, abuse and waste of taxpayer funds at these organizations which have been a black mark on public service in the Garden State."

The bill now heads to the full Senate for consideration.

**NORTH JERSEY DISTRICT
WATER SUPPLY COMMISSION
Written Testimony
In Opposition to Proposed Legislation
Assembly Bill A-2514 /Companion Bill S-359
And Assembly Bill A-2361/Companion Bill S-360
Which Would Subject All Actions Of
The North Jersey District Water Supply Commission
Which is Not Part of the Executive Branch of State Government
To Veto Control By Any Governor**

Introduction

There are two related bills, Assembly Bill No. 2514 (Senate Bill S-359) and Assembly Bill A-2361 (Senate Bill S-360) which would require the North Jersey District Water Supply Commission (“the Water Commission”) for the first time to submit the minutes of its meetings, in effect any action it takes, to the Governor for approval or veto. The latter bill, entitled the “State Authorities Reform Act” (SARA), would also impose extensive substantive requirements on the Commission by defining it as a “State authority” by virtue of the minutes submission requirement.

The Water Commission is not and never has been a “State authority.” It is a regional authority, not financed by the State, which is largely an instrumentality of its municipality-members. It cannot properly be transformed into a State entity by legislation requiring that it submit all of its actions to the Governor for approval or veto. The exercise of gubernatorial veto power over the Commission’s actions would be inconsistent with applicable Constitutional provisions, as well as with statutory and decisional law. SARA and A-2514 threaten significant expansion of State executive power, and would seriously undermine established principles of home rule.

Discussion

SARA would apply to any “State authority,” defined as:

- 1) “an independent State authority”;
- 2) “any board, commission, or agency that is organized in but not of a principal department of State government”;
- 3) “any State authority that is required to submit its minutes, resolutions, or actions for gubernatorial approval or veto.”

The Water Commission does not presently fit within any of these categories, but Section 21 of SARA, and also A-2514, would amend the Commission's governing statutes to include the Commission under category (3), by requiring the Commission to keep minutes and submit them to the Governor for approval or veto.¹ The proposed law would effectively prevent the Commission from taking any action that is not acceptable to the incumbent Governor. According to the official legislative Statement accompanying SARA, subjecting Commission actions to gubernatorial veto is to "assure" that the Commission is "covered by the Bill." This clearly implies a recognition that the Commission does not fit within "State authority" definition categories (1) or (2). Indeed, A-2514 in its caption refers to the Water Commission as a "*regional* commission," which it is.

The Water Commission traces its origin to the 1916 "Original Act," N.J.S.A. 58:5-1 to 30, which divided the State into two water supply districts, North Jersey and South Jersey. The Original Act provides that a water supply body of any municipality within a district may join with other municipalities and ask the Governor to appoint a commission "for the purpose of developing, acquiring and operating a water supply or a new or additional water supply" for the use of the municipality or municipalities. The role of the Water Commission was expanded in 1962 with the passage of the Transmission Act. N.J.S.A. 58: 5-31 to 58. Under the Transmission Act, the Water Commission was given the power to purchase additional water from the State, and to treat and distribute it to participating municipalities.

Neither the Original Act nor the Transmission Act declared the Water Commission to be an instrumentality of the State, nor placed it in any department of the Executive Branch of State government. Rather, the Water Commission was created primarily to serve and assist municipalities in facilitating their water supply, and only could become operative at their request. It acts in many contexts as an agent for and trustee of its constituent municipalities. City of Bayonne v. North Jersey District Water Supply Commission, 30 N.J. Super. 409, 416 (App. Div. 1954); United Water v. North Jersey District Water Supply Commission, 295 N.J. Super. 305, 309-312 (App. Div. 1996), aff'd., 151 N.J. 497 (1992)(the Commission is a "local unit" under the Interlocal Services Act). *See also* Passaic

¹ As a "public body" within the purview of the New Jersey Open Public Meetings Act, the Commission is already required to keep minutes, which it makes available to the public to the extent consistent with privacy concerns.

Valley Sewerage Commissioners v. U.S. ex rel Holbrook, 11 F. 2d 748 (3d Cir. 1926)(PVSC, similar in many respects to the Water Commission, is an “instrumentality” and “agent” of its constituent municipalities, which are the “principals”).

The court in K. S. B. Technical Sales Corp. v. North Jersey District Water Supply Commission, 150 N.J. Super. 533, 544 (Chan. Div.), aff'd. and modified, 151 N.J. Super. 218 (App. Div.), rev'd. on other grounds, 75 N.J. 272 (1977), app. denied, 435 U.S. 982 (1978), gave this description of the nature of the Water Commission:

While the Commission was created by statute and provides for commissioners to be appointed by the Governor with the advice and consent of the Senate, it also has municipalities as its participants, and provides an essential life-sustaining function to the citizenry of the participating municipalities. This public body, having both state and local characteristics, is in the court's opinion an amalgam.

As the Water Commission is an “amalgam”, it cannot properly be treated as exclusively an “instrumentality of State government” and thereby part of the Executive Branch of State government. For it to be so would be completely at odds with its status in many respects as an agent of and trustee for its constituent municipalities.

Which is why the Water Commission has never been allocated to a principal department of the State government, and thus does not fit within definitional category (2) of SARA, quoted above.² The New Jersey Constitution requires that “[a]ll executive and administrative offices, departments, and instrumentalities of the State government . . . shall be allocated by law among and within . . . [the] principal departments . . .” of the Executive Branch. Article 5, §4, ¶1. Significantly, the Water Commission was excluded from the

² The fact that the Governor appoints the Water Commission members does not convert it into a State agency. As the Supreme Court noted in New Jersey Turnpike Authority v. Parsons, 3 N.J. 235, 243 (1949), under “long-established principles with respect to the status of public corporations in the field of government,” the fact that members of an authority “are appointed by the Governor with the advice and consent of the Senate in no wise alters [its] status...as an independent corporate entity.” Moreover, the Governor does not select the chairman of the Commission, nor do any Executive Department officials sit on the Commission, as is the case with many bodies within the Executive Branch. Water Commission members are appointed for fixed, staggered terms. Unlike members of Executive Branch bodies, they do not serve at the Governor's pleasure, nor indeed is there any statutory provision for removal of a Commission member by the Governor.

1948 “program,” described in Mulhearn v. Federal Shipbuilding & Dry Dock Co., 2 N.J. 356, 359 (1949), “of reorganizing the executive and administrative instrumentalities of the State under the Constitution of 1947...” No “in but not of” language was added to the Commission governing law at that time, nor when that governing law was substantially expanded in 1962. Nor has the Water Commission’s governing law ever described it as an instrumentality of the State or of the State government.

In every previous instance in which the Governor has been given veto power by the Legislature, the public entity involved was explicitly allocated by its enabling statutes to one of the principal Executive departments. Most recently, the law relating to the Water Commission was amended in 2001 to increase the number of Commissioners from five to seven. The bill which effected the change, S 1117 (209th Legis), would also have given the Governor veto power over the Commission’s action, but that section of the bill was deleted in committee. That deletion effectively recognized that giving the Governor such power over the Water Commission would amount to a *de facto*, “back door” allocation of a non-State agency to the Executive Branch, where it has never been and could not be so allocated through the Constitutionally-required “front door,” *i.e.* Article 5, §4, ¶1.

It is important to keep in mind that a gubernatorial veto provision has the effect of giving the Governor “full control over [the] decision making” of the affected agency. Enourato v. New Jersey Building Authority, 90 N. J. 396, 401 (1982). The prospect of a gubernatorial veto over any and all actions taken would force the Water Commission, otherwise independent of State government and of the Executive Branch in particular, to toe the line, as directed by the then-incumbent governor, or face paralysis. The Legislature created the Water Commission and has defined its functions, powers and responsibilities. Were the gubernatorial veto provision to be adopted, the coherent scheme established by the Water Commission statutes, designed to facilitate water supply to various constituent municipalities, would be disrupted and subjected to political pressure exerted by the State Chief Executive. The State Constitution provides for a separation of powers among the three branches of government, which “...prevents any one branch from aggregating unchecked power, which might lead to oppression and despotism.” Bullet Hole Inc. v. Dunbar, 335 N.J.Super. 562, 573 (App. Div. 2000). As the Court stated in Communications Workers of America, AFL-CIO v. Florio, 130 N.J. 439, 457 (1992), “[a]lthough both the giving and taking of power can be constitutional if not excessive, the taking of power is more prone to abuse and therefore warrants an especially careful scrutiny.”

Moreover, subjecting an essentially local agency like the Water Commission to State executive control, through giving the Governor veto power over its actions, would be inconsistent with established principles of “home rule,” which are of Constitutional dimension. Art. 4, §7, ¶11.³ The gubernatorial veto provision would allow the Governor to wrest control of the Commission, and make it beholden to the State, and more specifically, to himself, not its members, the municipalities of the North Jersey water district. Giving the Governor unqualified veto power over every action by the Water Commission would radically change the manner in which the Commission functions, and would disrupt if not totally frustrate the whole scheme for implementation of water policy on a local and regional level as addressed in the Commission statutes. The Water Commission would in one stroke become captive to the wishes, whims and demands of the Governor, not the interests of the municipalities it was intended primarily to serve. Policy would be guided not by the Commission’s specialized expertise, its long-range planning, or its nearly century of experience in dealing with the water supply requirements of North Jersey, but rather by what an incumbent Governor wished. Further, the Commission’s need to work efficiently and flexibly to maintain a reliable and safe water supply for consumers and businesses could be impeded if every action it took had to await approval by the incumbent Governor. Public health and safety could be compromised by political concerns.

Further, extension of gubernatorial veto power over the Commission’s actions would potentially expose the Commission to any and all future executive orders, which may impose onerous obligations inconsistent with the local character of the Commission. Governor Christie has already issued at least two Executive Orders, No. 2 and No. 4, applicable to “State agencies,” defined therein as including all independent commissions that are required to submit their minutes to the Governor for possible veto. That is, under the Governor’s formulation in those Orders, it is the presence of gubernatorial veto power alone which defines what a “State agency” is. Therefore, enactment of either SARA or A-2514 would not only subject all individual Commission actions to nullification by the

³ For example, attempts by the Executive Branch, through the DEP, to issue orders to municipalities relating to water supplies have been rejected as ultra vires absent an order of the Governor declaring a water emergency. Matter of Water Supply Critical Area No. 2, 233 N.J.Super. 280 (App. Div. 1989); Borough of Keyport v. Dept. of Environmental Protection and Energy, 93 N.J.A.R.2d (DEPE) 51 (1992)

Governor by use of his proposed veto power, but would also expose the Water Commission to attempted direct regulation by the Governor pursuant to Executive Orders.

Nor is there any practical need for such a drastic and unprecedented grant of power to the Governor over the workings of the Water Commission. The Commission is completely financially independent from the State. It receives no State funds; its expenses are paid by the participating municipalities. N.J.S.A. 58:5-12, 5-16, 5-22, 5-23, 5-26, 5-40. The members of the Commission are not paid by the State, and Commission employees are not members of the State civil service. The Commission has an outstanding record of fiscal responsibility and operational efficiency. Further, subsection 2c of SARA describes the "State authorities" it purports to cover as those which "issue bonds and otherwise incur debt without voter approval..," implying that State debt is being incurred. The Commission has the authority to issue bonds, but it is not authorized "to incur any indebtedness on behalf of the State of New Jersey". N.J.S.A. 58:15-29. Its bonds are not a "debt or liability of the State . . . either legal, moral or otherwise" N.J.S.A. 5:5-51. In short, the Commission does not ask for State money, and does not put the State at financial risk.

As stated in Garden State Parkway Employees Union v. New Jersey Highway Authority, 105 N.J. Super. 168 (App. Div. 1969), there is a "distinction which exists between an ordinary state agency operating as an arm of the Executive Branch and the various authorities which the Legislative Branch has created as entities independent of the State." The Water Commission is such an entity, independent of the State. It is certainly not part of the Executive Branch of State government. It therefore cannot and should not be placed under the control of the Governor, as would occur by enactment of either A-2514 or A-2361 in their current form.

Rate Comparison – N J Major Public vs. Private Water Utilities

<p>WNP Rates DECREASED by 2.2% in 2010. Water reaches approximately 4,000,000 New Jersey Residents</p>		<p>North Jersey District Water Supply Commission</p>									
<p>Rates have increased 11.85% over 3 years Population served = 750,000</p>		<p>Passaic Valley Water Commission</p>									
<p>Population served = 240,000</p>		<p>Jersey City Water Works</p>									
<p>Population served = 250,000</p>		<p>Middlesex Water Co.</p>									
<p>Population served = 2,500,000</p>		<p>New Jersey American Water</p>									
<p>United Water is a subsidiary of French Utility – Suez Environment Population served = 750,000</p>		<p>United Water New Jersey</p>									

Wholesale Treated Water Rate (\$ per Million Gallons)

\$0 \$250 \$500 \$750 \$1,000 \$1,250 \$1,500 \$1,750 \$2,000 \$2,250 \$2,500 \$2,750

NOTES:

1. **Public Utility** – Rates are approved by local government agencies, councils, or appointed commissioners. Average CEO salary is less than \$200,000
2. **Private Utility** – Rates are approved by a state operated utility commission (i.e. NJ Board of Public Utilities). Average CEO Salary is **\$1.5 Million** paid by citizens of N.J.
3. Water Utilities are considered Natural Monopolies.
4. United Water, through a privatization contract, operates Jersey City Water Works – current contract term thru 1/31/2018.
5. All costs associated with operating both Public and Private utilities are paid by N.J. citizens and businesses that reside and/or are located in the area served.