

Legislative Commission on



Resource Needs of New York State and Long Island

2012 • Bob Sweeney, Chairman



Dear Friend:

This newsletter summarizes the initiatives and accomplishments of the New York State Assembly Legislative Commission on Water Resource Needs of NYS and Long Island. Safe, clean and reliable supplies of water continue to be a high priority in the Assembly. As the 2012 legislative session wraps up and a new session approaches, the Water Commission will remain focused on issues including public water supply protection, the impacts of climate change on our waters and ground-water protection. The Commission will also continue to monitor unresolved issues related to natural gas drilling proceedings and regulatory activities. As always, I welcome your ideas and concerns. Please do not hesitate to contact me.

Sincerely,

*Assemblyman Robert Sweeney
Chair, Legislative Commission on
Water Resource Needs of NYS and Long Island*

ISSUE HIGHLIGHTS

Fracking Update	2
Assessing Health Impact Associated With Hydraulic Fracturing	3
Waterfronts, Waterways, Navigation and Flood Prevention	4
Protecting New York's Natural Ecosystems from Invasive Species	5
Seagrass Protection	5
Gone Fishing	6
State Water Pollution Control Revolving Fund	7
Wastewater Treatment	7
Protecting Drinking Water Quality	8
Protecting Long Island's Water Quality	9
Environmental Protection Fund (EPF)	10



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Fracking Update

New York's lands and waters are unique and delicately balanced resources, protection and preservation of which promotes the health, safety and welfare of the people of this State. Over the past few years, low-permeability shale gas reservoirs, including the Marcellus and Utica shale formations, have become the focus of interest as potential new domestic natural gas sources. While there are potential economic benefits

associated with increased natural gas production, there are also potential environmental and health impacts. Contamination, which may result from the production of natural gas, could pose a threat to public health, the environment and the economy of the State. With that in mind the Commission has been advancing several measures intended to protect public health and water resources. A description of those measures follows.

▲ **Classify Waste Resulting from Oil or Natural Gas Production Activities as Hazardous Waste (A.7013 Sweeney)**

Current Department of Environmental Conservation regulations that govern waste produced by the oil and natural gas industries exempt "drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy" from regulation as hazardous waste. This legislation would classify all waste resulting from oil or natural gas production activities as hazardous waste, if such waste meets the definition of hazardous wastes as set forth in the Environmental Conservation Law. The exemption exists despite the fact that the waste resulting from the exploration, development, extraction and production of crude oil and natural gas could otherwise be classified as hazardous.

This legislation would ensure that if waste from these operations meets the definition of hazardous waste it be treated in a manner consistent with other hazardous wastes including generation, transportation, treatment, storage and disposal. Failure to properly classify waste that would otherwise meet the hazardous waste threshold could present a real danger to public health and the environment. If not treated properly, hazardous waste can lead to contaminated air, drinking water, soil, and food.

(Status: Passed the Assembly; No Senate action)

▲ **Establishing the Natural Gas Production Contamination Response and Compensation Program (A.8572 Sweeney)**

A measure proposed by New York State Comptroller Thomas P. DiNapoli, would prevent costs from being passed on to taxpayers. In addition, this legislation would: provide strict liability for damage sustained within the State as a result of contamination caused by natural gas production; require prompt cleanup and decontamination of any affected real or personal property; and, establish a fund for the payment of remediation costs and timely and adequate compensation to any persons damaged by such contamination.

(Status: Assembly Calendar; No Senate action)

▲ **Restrict the Use of Fracking Flowback Water (A.6913-A O'Donnell)**

This bill would prohibit waste water from natural gas or oil drilling, which typically contains a variety of chemical and possibly radioactive contaminants, from being used on highways for purposes such as dust suppression and melting ice.

(Status: Assembly Calendar)

▲ **Local Zoning Determinations (A.3245 Lifton)**

Approximately 100 municipalities in the State have adopted drilling bans. In 1981, the Environmental Conservation Law was amended to provide local governments with the explicit authority to regulate local road use activities associated with natural gas and oil drilling. That legislation also made clear that local governments maintained their authority under the Real Property Tax Law to assess taxes; however, it did not include a specific reference to municipal zoning power. Recently, the ability of local governments to enforce zoning laws was challenged.

The purpose of this bill is to restate that municipalities have the ability to regulate land use generally despite the fact that such land use regulation may have an incident-

tal effect upon the oil and natural gas industries. In other words, municipalities have the power to regulate where activities such as oil and natural gas drilling may take place through their zoning powers but may not enact local laws or ordinances that directly regulate industry or how it operates. This rule was articulated by the Court of Appeals in the case of *Frew Run Gravel Products v. Town of Carroll* in the similar context of mining. Additionally, in the context of natural gas drilling, this rule was recently applied by the Supreme Court, Tompkins County, in its decision in the case of *Anschutz Exploration Corp. v. Town of Dryden*.

(Status: Passed the Assembly; No Senate action)

Assessing Health Impact Associated With Hydraulic Fracturing

Currently, the DEC is in the process of developing a final Supplemental Generic Environmental Impact Statement (SGEIS), to examine the potential impacts to the environment from gas exploration and development using high-volume hydraulic fracturing and horizontal gas drilling. The SGEIS indicates that any potential health concerns are addressed within the document; however, a letter signed by over 250 medical professionals, including the American Academy of Pediatrics, Medical Society of the State of New York, and the New York State Nurses Association was sent to State officials calling for a health impact assessment of hydraulic fracturing. Similar concerns were raised at a hearing held in May 2011 by the Assembly Standing Committees on Environmental Conservation and Health.

Degradation of air quality and contamination of drinking water have occurred in other states where gas exploration and development using high-volume hydraulic fracturing have commenced. In light of this information, a comprehensive study should be conducted in New York. According to the National Academies of Science, an assessment of potential health impacts, known as a Health Impact Assessment (HIA), caused by a land use decision should employ a variety of public health tools in order to prevent negative impacts and should examine issues such as: costs to government and private health care systems; impacts on transportation and housing; air and water quality concerns and community impacts.

HIAs are becoming more widely used in formulating government decision making worldwide. An HIA utilizes existing data sources, surveys, risk assessment, literature review, and expert opinions to predict the impact on a population from a particular decision. HIAs are a practical tool that can provide a structured process to: determine a policy or project's impact on public health; bring both immediate and long-term health benefits; maximize positive health impacts and minimize negative ones; and ensure funds are used efficiently to provide the greatest benefit.

The sheer scale of the potential high-volume hydraulic fracturing and horizontal gas drilling that could be conducted in New York warrants a comprehensive study of its potential health impacts.

▲ **Health Impact Assessments (A.10234 Sweeney)**

This bill would require a study of the impacts associated with gas exploration and development using high-volume hydraulic fracturing and horizontal gas drilling's effects, direct and indirect, on public health in general as well as costs to the State's healthcare network. Specifically, this legislation would require a School of Public Health within the State University of New York to conduct a comprehensive health impact assessment of the affects of high volume hydraulic fracturing in New York State.

(Status: Passed the Assembly; No Senate action)



Waterfronts, Waterways, Navigation and Flood Prevention

▲ **The Rockland Bergen Bi-State Watershed Flood Prevention and Protection Act (A.2206 Zebrowski)**

This legislation would formalize the existing informal working relationship between the states of New York and New Jersey to address the issues of flooding hazards along various waterways that cross the interstate border region; more specifically, relating to tributaries and watersheds of the Hackensack River, Mahwah River, Ramapo River, Saddle River, and Sparkill Brook/Creek, within the counties of Rockland, New York and Bergen, New Jersey. This legislation identifies the necessity for a bi-state approach to flood prevention and emphasizes the long history of cooperation between the states of New York and New Jersey.

(Status: Passed the Assembly; No Senate action)

▲ **Designate Canadarago Lake as a Major Inland Lake (A.9672 Magee)**

This bill would add the Canadarago Lake in Otsego County to the definition of “inland waterways” for purposes of the Local Waterfront Revitalization Program. Such a designation would permit communities along the River to apply for grants under the Local Waterfront Revitalization Program funded by the Environmental Protection Fund.

(Chapter 147 of the Laws of 2012)

▲ **Designate the Buffalo River as an Inland Waterway (A.9297 Ryan)**

This legislation would classify the Buffalo River in Erie County as one of the state’s major rivers and designate it as an inland waterway for purposes of the Local Waterfront Revitalization Program administered by the Department of State. Such a designation would permit communities along the River to apply for grants under the Local Waterfront Revitalization Program funded by the Environmental Protection Fund.

(Chapter 32 of the Laws of 2012)

▲ **Protection of Jamaica Bay (A.9871-A Goldfeder)**

The legislation would restrict the types of fill material that can be used to fill the borrow pits in the State waters of Jamaica Bay. Due to the increase in vessel size, New York State waterways such as channels and harbors are being excavated, in a process known as dredging, to maintain sufficient depth for safe and efficient vessel operations. This legislation would prohibit the Department of Environmental Conservation from authorizing the use of hazardous materials in the filling of the Jamaica Bay borrow pits.

(Status: Passed the Assembly; No Senate action)

Protecting New York's Natural Ecosystems from Invasive Species

In 2010, the Washington Post published an article estimating the economic impact of invasive species at \$120 billion per year nationwide. Unfortunately, New York has not been immune to the devastation. Aquatic and terrestrial invasives have all invaded New York including, giant hogweed, mitten crabs, emerald ash borers, and feral hogs.

Invasive species pose significant threats to ecosystems such as wetlands, water bodies, forests, meadows and grasslands. These threats not only affect the environment, but also human health and well-being. Invasive species threaten New York's environment by out-competing native species, diminishing biological diversity,

and changing whole ecosystems including those within public parks and waterways.

Helping prevent the introduction, spread and growth of invasive species is essential for the protection of New York's environment. At an Assembly Environmental Conservation Committee public hearing, held in September 2011, to solicit public input on the best methods for preventing the introduction of invasive species and combating the invasive species already present, the myriad problems associated with invasive species received extensive discussion. As a follow-up to the hearing, several bills were introduced to address some of the concerns raised.

▲ **Protect Ecosystems Against Invasive Species (A.9422-A Sweeney)**

This legislation would provide the Departments of Environmental Conservation and Agriculture and Markets with explicit authority to regulate the sale, purchase, possession, introduction, importation and transport of invasive species and establish penalties for those who violate such regulations.

(Chapter 267 of the Laws of 2012)

▲ **Increased Information About Invasive Species (A.9581 Sweeney)**

This legislation would increase the amount of information available about invasive species. Specifically, this bill would require DEC to include information on laws affecting the eradication, suppression, reduction or management of invasive species in the fishing and hunting syllabus.

(Chapter 342 of the Laws of 2012)

Seagrass Protection

New York seagrass beds are a vital habitat and nursery grounds for numerous commercially, recreationally and ecologically important fish and shellfish species. Seagrass beds used to be much larger - some estimates reaching as large as 200,000 acres in 1930. Today only 21,803 acres remain.

▲ **Seagrass Protection Act (A.7988-A Sweeney)**

This legislation would authorize the DEC to adopt rules and regulations to regulate coastal and marine activities that threaten seagrass. Specifically, this legislation would: designate seagrass management areas; restrict the types of mechanically powered fishing gear used in seagrass areas; make information pertaining to seagrass beds available on the agency website; and, require DEC to develop and adopt, after consultation with stakeholders, a seagrass management plan for designated seagrass management areas to protect seagrass beds and preserve traditional recreational activities.

(Chapter 272 of the Laws of 2012)

Gone Fishing...

▲ **Fish Consumption Advisories (A.6809 Cook)**

This legislation would increase the amount of information available to the public regarding the dangers of catching and ingesting certain types of fish caught by sport fisherman. Specifically, it would require the DEC to post health advisories or notices relating to fishing restrictions at any State boat launch servicing that particular body of water and at any existing nearby check-in sites or information areas.

(Status: Assembly Calendar)

▲ **Free Sport Fishing Clinics (A.10202 Sweeney)**

This bill would authorize DEC to expand the number of free sport fishing clinics that may be conducted annually, allowing additional people to be introduced to recreational angling without having to purchase fishing licenses if the clinic is held on a fresh water body. Similarly, if the clinic is held in a marine district, the participant would not be required to sign up for the recreational marine fishing registration to participate in the clinic. The bill would also eliminate the requirement that Department staff provide the actual instruction and allow organizations designated by the Department to conduct free sport fishing clinics. Clinics conducted by such organizations would be required to be undertaken pursuant to guidelines established by the Department.

(Chapter 103 of the Laws of 2012)



Assemblyman Bob Sweeney is pictured receiving an award from the members of the New York Coalition for Recreational Fishing. Recently Sweeney was presented with this award for his tireless efforts to support recreational fishing throughout the state. Assemblyman Sweeney sponsored a bill that allows the DEC to hold additional free fishing clinics. This was recently signed into law by Governor Cuomo.



Assemblyman Bob Sweeney is pictured with Members of the US Coast Guard Auxiliary, and Suffolk County Legislator Wayne Horsley for Safe Boating Day in Copiague's Tanner Park. The event was sponsored by the US Coast Guard Auxiliary Division 1 and the Town of Babylon. The purpose of this event was designed to enhance boating safety.

State Water Pollution Control Revolving Fund

The State Water Pollution Control Revolving Fund (“Fund” or “CWSRF”) is funded through federal grants pursuant to the Federal Water Quality Act of 1987, and requires State matching funds equal to twenty percent of the federal grants. The New York State Environmental Facilities Corporation (EFC), together with DEC, administers the Clean Water State Revolving Fund, created by Chapter 565 of the Laws of 1989. The CWSRF was established to provide financial assistance to recipients, including municipalities, to acquire, construct and upgrade eligible water pollution control projects. In 1992, the CWSRF subsidy level was increased to fifty percent for qualified recipients. The increased subsidy, together with EFC’s interest-free, short-term financing program stimulated communities to begin Clean Water projects and, in particular, upgrades of sewage treatment facilities.

▲ **Extending the CWSRF (A.9786 Sweeney)**

This legislation would extend the State Water Pollution Control Revolving Fund’s fifty percent subsidy through September 30, 2015. If this enhanced 50% interest rate subsidy were not extended, the statutory authority to provide an interest rate subsidy would revert to the existing one-third interest rate subsidy, effective October 1, 2012. **(Chapter 65 of the Laws of 2012)**

Wastewater Treatment

Discharges of untreated or partially treated sewage include contaminants and pollutants, pathogens, bacteria and toxins raising public health, safety and environmental concerns. Current notification procedures have proven inadequate in disseminating information to the public regarding such discharges. Prompt notification of discharge events, including media notification, would help ensure the public has the information needed to limit recreational uses and activities such as swimming and diving.

▲ **Sewage Pollution Right To Know Act (A.9420-A Sweeney) (A.10585-A Sweeney)**

The purpose of this bill is to increase public notice regarding certain sewage discharges. Specifically, this legislation would require Publicly Owned Treatment Works (POTWs), for discharges of untreated or partially treated sewage including combined sewer overflows, to immediately, but in no case later than two hours, report such discharges to DEC and the local health department. Information required to be included in these reports would at a minimum include: the volume and treated state of the discharge; the date and time of the discharge; the expected duration of the discharge to the extent it is knowable; a brief description of the steps taken to contain the discharge; and, the location affected, with the maximum specificity possible. Further, no later than four hours after the discharge, DEC would be mandated to notify the New York State Department of Health, the Chief Executive Officer (CEO) of the municipality in which the discharge occurred as well as any adjoining municipalities’ CEOs that may be affected, and the general public through local news outlets, newspapers and other available media. After negotiations with the Senate, A.10585-A (Rules, Sweeney) provides greater specificity regarding the types of discharges to be reported and requires the Department of Environmental Conservation to promulgate rules and regulations establishing specific notification requirements was introduced and signed into law.

Protecting Drinking Water Quality

New York State is fortunate to have plentiful water resources. The preservation and protection of these resources is vital to New York's residents and businesses, which rely on these resources for drinking water supplies, and to support agriculture, manufacturing and other industries and recreation in the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs now and into the future.

▲ **Financing for Residential and Small Business On-Site Wastewater Facilities (A.10220 Sweeney)**

This legislation seeks to improve water quality by providing financing for residential and small business on-site wastewater treatment systems. Specifically, this bill would: increase to \$40 million the amount of funding available for linked loans under the Water Pollution Control Linked Deposit Program; authorize the Environmental Facilities Corporation (EFC) to develop a program to provide grants for residential properties that meet the definition of "affordable workforce housing;" provide priority to projects that would help mitigate existing water quality impairment or avoid future water quality contamination; revise the definitions for "eligible project" and "recipient", and require EFC to increase the amount of Water Pollution Control Linked Deposit Program information available on its website.

(Status: Assembly Ways and Means Committee; No Senate action)

▲ **Statewide Private Well Testing Act (A.667-B Jaffee)**

This legislation would mandate the testing of drinking water from private wells upon the transfer of property. The parameters required to be tested for would include at least bacteria (total coliform), nitrates, nitrites, sodium, iron, manganese, pH, and all Volatile Organic Compounds for which a maximum contaminant level has been established. This legislation would apply statewide.

(Status: Passed the Assembly; No Senate action)

▲ **Proper Disposal of Pharmaceutical Products (A.9421 Sweeney)**

Expired, unwanted, or unused pharmaceutical drugs require proper disposal in order to prevent accidental ingestion and/or unintended environmental harm. For example, an extensive water analysis conducted by the United States Geological Survey detected at least one contaminant in approximately 96 percent of the water samples taken from 74 water sources in 25 states and Puerto Rico.

Although drug collection events are taking place in some communities, a more coordinated effort is required to help prevent continued contamination. This legislation would authorize the Department of Environmental Conservation, in coordination with the State Police, to establish a demonstration drug disposal program at State Police facilities in representative rural, suburban and urban areas of the State in order to provide data that could be used to determine the most effective methods of disposal. This legislation passed the Assembly, but the Senate has not yet taken action.

Both the Assembly (A.10623 Rules, Cusick) and the Senate passed legislation to create the Internet System for Tracking Over-Prescribing Act (I-STOP) which, if signed into law by the Governor, would include provisions intended to strengthen the regulation of controlled substances and would also require the State Department of Health to establish a program to allow for the safe disposal of unused controlled substances anonymously.

Protecting Long Island's Water Quality

Long Island's groundwater aquifer is the sole source of drinking water for nearly three million residents of Nassau and Suffolk County and is considered to be highly vulnerable to pollution. Because of the value of this resource to the public health and economic stability of the region, protection of Long Island's groundwater resources has been the subject of substantial federal, state and local investment, legislation and policy initiatives for nearly 40 years. Despite these efforts, recent water quality data included in the draft Suffolk County Comprehensive Water Resources Management Plan, clearly demonstrates that Long Island's water resources are in a state of gradual decline. Also, it is now well understood that Long Island's groundwater is functionally interconnected to its surface water resources and that groundwater pollution is rapidly becoming a key management issue in the protection and restoration of Long Island's surface waters, which are integral to the Long Island economy.

▲ **Limit Nitrogen in Long Island Groundwater (A.10221-A Sweeney)**

Nitrogen is essential to life and takes many forms including ammonia, ammonium, nitrites, nitrates, and nitrous oxides. In the recently-released draft Suffolk County Comprehensive Water Resources Management Plan, the Suffolk County Department of Health Services reported that approximately 75 percent of the County's population relies on on-site sanitary wastewater disposal systems for wastewater management. This reliance results in 66 percent of community supply wells having a high or very high susceptibility to nitrate contamination. In addition, studies have shown that Long Island estuaries are approximately 80 percent saltwater and 20 percent freshwater. This combination of fresh and saltwater means that high nitrogen levels in groundwater are having a negative impact on Long Island estuaries, including eutrophication, pollution and algal blooms. This legislation seeks to prevent the further contamination of estuaries by requiring DEC to adopt a low nitrogen groundwater standard on Long Island.

This legislation would require DEC to develop an enforceable groundwater standard for nitrogen of no more than two milligrams per liter in Nassau and Suffolk counties, after holding a public hearing and within 18 months of the effective date of this legislation.

(Status: On Third Reading in Assembly; No Senate action)

▲ **Special Long Island Groundwater and Surface Water Protection Areas (A.10584 Sweeney)**

The purpose of this bill is to improve the quality of surface and groundwater on Long Island by establishing a process for coordination and cooperation. Specifically, this bill would: modify the existing Special Groundwater Protection Areas to include Special Surface Water Protection Areas, including areas in the Peconic Estuary Watershed, the South Shore Estuary Reserve Watershed and the Long Island Sound Watershed; define the Peconic Estuary Watershed, the South Shore Estuary Reserve-Watershed and the Long Island Watershed; replace the Long Island Regional Planning Board as the designated planning entity for the special water protection areas with a Long Island Water Planning Board consisting of elected officials from the counties and town representing the special groundwater and surface water areas; modify the requirements of the comprehensive management plan for Special Groundwater Protection Areas to include the restoration of water quality and the development of an ambient groundwater standard for nitrogen; and, modify the existing authorization related to local land use regulation within a special groundwater protection area to include surface water protection areas.

(Status: Passed the Assembly; No Senate action)

Continued on page 12

Environmental Protection Fund (EPF)

For Fiscal Year 2012-2013, the governor proposed to retain funding for the EPF at \$134 million, the same level as the past two fiscal years. The Legislature accepted this appropriation, although there were minor changes within the funding categories.

The chart below provides information about funding for water-related categories of interest.

EPF Category	Fiscal Year 12-13 (in millions)
Landfill Closure/Gas	270
Hudson River Damage Assessment	175
Pesticides Program	960
Pollution Prevention Institute	2,100
Local Waterfront Revitalization	11,500
Non-point Source Pollution Control (Ag)	13,000
Non-point Source Pollution Control (Muni)	4,000
Finger Lakes/ Lake Ontario Water Protection	1,000
Soil & Water Conservation Districts	3,500
Long Island South Shore Estuary Reserve	900
Invasive Species	3,400
Oceans & Great Lakes	4,728
Water Quality Improvement	2,932
Agricultural Waste Management	700

**▲ Increased Funding for the Environmental Protection Fund
(A.7137-A Latimer)**

This legislation would increase the amount of revenue deposited into the EPF by including a percentage of revenue from unclaimed bottle deposits.

(Status: Passed the Assembly; No Senate action)

**▲ Unredeemed Deposits Dedicated to the Environmental Protection Fund
(A.10519 Sweeney)**

This session, the Legislature passed a bill that would increase the amount of funds added to the Environmental Protection Fund (EPF) from the unredeemed deposits retained from the Returnable Beverage Container Law, commonly known as “The Bottle Bill.” The bill would deposit into the EPF a portion of the unredeemed container deposits, beginning with \$10 million in FY 2013-2014 and increasing yearly to \$56 million in FY 2018-2019 and subsequent fiscal years. A detailed funding chart follows.

State Fiscal Year	EPF Funding Increase
2013-14	\$10 million
2014-15	\$20 million
2015-16	\$30 million
2016-17	\$40 million
2017-18	\$50 million
2018-19	\$56 million

(Status: Passed both Houses; awaiting action by the Governor)



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Continued from page 9

▲ **Clarify Application Procedures in the Long Island Pine Barrens (A.10628 Sweeney)**

This legislation would clarify the procedure for the Central Pine Barrens Commission to deem applications complete and allow the time period for review to be suspended in cases of incomplete applications. The bill would ensure that the Commission and applicants have a sufficient amount of information to permit a thorough analysis and review by the Commission to assure that resulting decisions are balanced and based on the consideration of all applicable facts.

(Status: Passed the Assembly; No Senate action)

New York currently has an abundant supply of clean potable water. Water is important for human health, but it is also a vital economic resource for New York's residents and businesses, including water to support agriculture, manufacturing, and recreation in the State. On Long Island, clean water is especially important because drinking water is provided by a sole source aquifer. Once contaminated, the drinking water supply for three million people would be significantly compromised.

Contact Information

If you would like further information or to share your ideas or concerns, please call the Chair's office at **518-455-5787**, or send facsimiles to **518-455-3976**. Letters may be sent to **Assemblyman Robert Sweeney, Chairman of Legislative Commission on Water Resource Needs of New York State and Long Island, Room 625, Legislative Office Building, Albany, New York 12248** or by e-mail to sweeney@assembly.state.ny.us. Also, to further the NYS Assembly's efforts to reduce waste, please inform us if you have a change of address or wish to be removed from the mailing list.