S T A T E O F N E W Y O R K

6181

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sens. SEWARD, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the Montgomery, Otsego, Schoharie county solid waste management authority; and repealing certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 2 of section 2041-a of the public authorities law, as amended by chapter 7 of the laws of 2012, is amended and a new subdivision 2-a is added to read as follows:

2. "Authority" shall mean the public benefit corporation created by section two thousand forty-one-b of this title, known as the Montgomery, Otsego, Schoharie solid waste management authority. [If and at such time that Otsego county terminates its membership in the authority pursuant to section two thousand forty-one-w of this title, the "authority" shall be known as the Montgomery-Schoharie solid waste management authority and Otsego county would no longer be considered one of the "participating counties" for the purposes of this title.]

2-A. "AUTHORITIES BUDGET OFFICE" SHALL MEAN THE INDEPENDENT ENTITY WITHIN THE DEPARTMENT OF STATE ESTABLISHED PURSUANT TO SECTION FOUR OF THIS CHAPTER.

S 2. Subdivision 6 of section 2041-b of the public authorities law is REPEALED.

S 3. Section 2041-w of the public authorities law, as amended by chapter 7 of the laws of 2012, is amended to read as follows:

S 2041-w. [Withdrawal of Otsego county] DISSOLUTION. 1. Notwithstanding any provision of law to the contrary, [Otsego county is hereby authorized to terminate its membership in] the Montgomery, Otsego, Schoharie county solid waste management authority[; provided, however, that Otsego county shall fulfill its obligations and responsibilities, and terminate such membership, as may be required by and consistent with existing or hereafter-entered superseding agreements between the author-

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

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ity, and the counties of Montgomery, Otsego, and Schoharie, and become effective upon approval of a resolution by a majority of the duly constituted membership of the Otsego county board of representatives, filed with the authority and the legislative board clerks of the component counties.

2. The authority and the counties of Montgomery, Otsego and Schoharie shall execute a plan for Otsego county's assumption of its proportional and equitable share of the authority's assets and liabilities. For purposes of this section, "proportional and equitable share of the authority's assets and liabilities" shall be based on the allocation percentages specified in the "Post Closure Monitoring and Maintenance Agreement", dated December nineteenth, two thousand nine, entered into between the Montgomery, Otsego, Schoharie county solid waste management authority and the three counties. Assets shall include, but not be limited to, the authority's reserve and operating funds and rights to the use of any Montgomery, Otsego, Schoharie county solid waste management authority operated transfer stations in Otsego county subject to the conditions held by the respective owners of the properties] SHALL BE DISSOLVED ON A DATE ESTABLISHED BY RESOLUTION ADOPTED UPON A VOTE OF A MAJORITY OF THE BOARD OF DIRECTORS OF SAID AUTHORITY. IN ANY SUCH RESOLUTION, THE DATE OF DISSOLUTION SHALL NOT OCCUR PRIOR TO THE TERMINATION OF THE "SERVICE AGREEMENT" DATED AS OF MAY FIRST, NINETEEN EIGHTY-NINE, AS AMENDED BY AMENDMENT NO. 1 DATED AS OF MAY FIRST, TWO THOUSAND TEN, BY AND BETWEEN THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE AND THE AUTHORITY, NOR LATER THAN OCTOBER FIRST, TWO THOUSAND FOURTEEN. UPON THE ADOPTION OF SUCH RESOLUTION, THE BOARD OF DIRECTORS SHALL MAKE PROVISION FOR THE WINDING DOWN OF THE BUSINESS AND AFFAIRS OF THE AUTHORITY, AND SHALL DISTRIBUTE THE ASSETS AND LIABILITIES OF THE AUTHORITY TO THE MEMBER COUNTIES AS OF A TRANSFER DATE OR DATES ESTABLISHED BY THE AUTHORITY, WHICH SHALL BE ON OR PRIOR TO THE DATE OF DISSOLUTION, ALL IN ACCORDANCE WITH SUBDIVISIONS TWO AND THREE OF THIS SECTION.

2. IN DISTRIBUTION OF THE ASSETS AND LIABILITIES OF THE AUTHORITY TO THE MEMBER COUNTIES, THE FOLLOWING TRANSACTIONS SHALL OCCUR:

(A) THE AUTHORITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE, RESPECTIVELY, SHALL ACCEPT, ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE REAL PROPERTY, STRUCTURES AND IMPROVEMENTS CONSTITUTING THE TRANSFER STATIONS OWNED BY THE AUTHORITY, INCLUDING BUT NOT LIMITED TO ANY AND ALL PERMITS AND LICENSES ATTENDANT THERETO, ACCORDING TO THE FOLLOWING DISTRIBUTION, WITHOUT REGARD TO APPRAISED VALUE AND WITHOUT OTHER CONSIDERATION EXCEPT AS SET FORTH IN THIS SECTION.

(I) TO THE COUNTY OF MONTGOMERY, THE TRANSFER STATIONS KNOWN AS THE WESTERN TRANSFER STATION LOCATED AT 4583 ROUTE 5S IN SPRAKERS, N.Y., AND THE AMSTERDAM TRANSFER STATION LOCATED AT 1247 ROUTE 5S IN AMSTERDAM, N.Y.;

(II) TO THE COUNTY OF OTSEGO, THE TRANSFER STATIONS KNOWN AS THE NORTHERN TRANSFER STATION LOCATED AT 5802 STATE HIGHWAY 28 IN COOPERSTOWN, N.Y., AND THE ONEONTA TRANSFER STATION LOCATED AT 75 SILAS LANE IN ONEONTA, N.Y.; AND

(III) TO THE COUNTY OF SCHOHARIE THE TRANSFER STATION KNOWN AS THE SCHOHARIE TRANSFER STATION LOCATED AT 2805 ROUTE 7 IN COBLESKILL, N.Y. TOGETHER WITH THE BALANCE OF THE REAL PROPERTY OWNED BY THE AUTHORITY AT SUCH LOCATION, INCLUDING BUT NOT LIMITED TO THE ADMINISTRATIVE OFFICE BUILDING OF THE AUTHORITY LOCATED ADJACENT TO SAID TRANSFER STATION.

(B) CONCURRENTLY WITH THE CONVEYANCE OF TITLE TO THE REAL PROPERTY AND IMPROVEMENTS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHOR-

ITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE, RESPECTIVELY, SHALL ACCEPT, WITH RESPECT TO EACH SUCH TRANSFER STATION, ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE MOVEABLE FIXTURES AND EQUIPMENT LOCATED AT, AND ATTENDANT TO, THE OPERATION OF SUCH TRANSFER STATIONS. THE INVENTORY OF MOVEABLE FIXTURES AND EQUIPMENT PREPARED BY THE AUTHORITY AS OF NOVEMBER FOURTH, TWO THOUSAND THIRTEEN AND ON FILE WITH THE CLERK OF EACH COUNTY, UNLESS OTHERWISE AGREED BY THE COUNTIES, SHALL BE THE BASIS FOR SUCH TRANSFERS, SUBJECT TO ORDINARY USE BY THE AUTHORITY PRIOR TO THE TRANSFER DATE. ON THE WRITTEN REQUEST OF ANY OF THE COUNTIES, MADE NOT LATER THAN FIFTEEN DAYS AFTER THE FIRST OF THE CONVEYANCES DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE AUTHORITIES BUDGET OFFICE SHALL DESIGNATE A MEDIATOR AND/OR AN APPRAISER TO EXAMINE THE DISTRIBUTION OF MOVEABLE FIXTURES AND EQUIPMENT AT EACH OF THE TRANSFER STATIONS, WHICH MEDIATOR OR APPRAISER SHALL BE AUTHORIZED TO ORDER A MORE EQUITABLE DISTRIBUTION OF SUCH MOVEABLE FIXTURES AND EQUIPMENT, TO ENSURE THAT EACH SUCH TRANSFER STATION IS FUNCTIONALLY CAPABLE OF CONTINUING OPERATIONS AFTER THE AUTHORITY CEASES PROVISION OF SOLID WASTE SERVICES. ANY SUCH ORDER ISSUED BY SUCH MEDIATOR OR APPRAISER SHALL BE FINAL AND BINDING ON EACH OF THE COUNTIES.

(C) THE AUTHORITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE SHALL ACCEPT, IN COMMON OWNERSHIP, ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE REAL PROPERTY, STRUCTURES AND IMPROVEMENTS CONSTITUTING THE LANDFILLS MORE FULLY DESCRIBED IN THE "POST CLOSURE MONITORING AND MAINTENANCE AGREEMENT" DATED DECEMBER TENTH, TWO THOUSAND NINE, ENTERED INTO BETWEEN THE MONTGOMERY, OTSEGO, SCHOHARIE COUNTY SOLID WASTE MANAGEMENT AUTHORITY AND THE THREE COUNTIES, TOGETHER WITH ALL MONIES HELD BY THE AUTHORITY IN THE LANDFILL OPERATING ACCOUNT AND THE AUTHORITY'S INTEREST IN THE POST CLOSURE RESERVE ACCOUNT ESTABLISHED PURSUANT TO SAID AGREEMENT. FROM AND AFTER THE TRANSFER OF TITLE TO THE LANDFILLS FROM THE AUTHORITY TO THE COUNTIES, THE AUTHORITY SHALL HAVE NO FUTURE OBLIGATION AND RESPONSIBILITY UNDER SAID POST CLOSURE MONITORING AND MAINTENANCE AGREEMENT, WHICH RESPONSIBILITIES SHALL BE ASSUMED BY THE COUNTIES.

(D) CONCURRENTLY WITH THE CONVEYANCE OF TITLE TO THE REAL PROPERTY AND IMPROVEMENTS DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION, THE AUTHORITY SHALL CONVEY, AND THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE SHALL ACCEPT IN COMMON OWNERSHIP, WITH RESPECT TO EACH SUCH LANDFILL, ALL OF THE AUTHORITY'S RIGHT TITLE AND INTEREST IN THE MOVEABLE FIXTURES AND EQUIPMENT LOCATED AT, AND ATTENDANT TO, THE MONITORING, MAINTENANCE AND OTHER POST-CLOSURE ACTIVITIES REQUIRED AT SUCH LANDFILLS BY LAW. THE INVENTORY OF MOVEABLE FIXTURES AND EQUIPMENT REFERRED TO IN PARAGRAPH (B) OF THIS SUBDIVISION SHALL BE THE BASIS FOR SUCH TRANSFERS, SUBJECT TO ORDINARY USE BY THE AUTHORITY PRIOR TO THE TRANSFER DATE.

(E) UPON THE COMPLETION OF THE PROPERTY TRANSFERS SET FORTH IN PARAGRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION, BUT IN ANY EVENT NOT LATER THAN OCTOBER FIRST, TWO THOUSAND FOURTEEN, ALL OTHER ASSETS OF THE AUTHORITY, INCLUDING ALL OPERATING AND RESERVE FUNDS, SHALL BE DISTRIBUTED TO THE MEMBER COUNTIES IN ACCORDANCE WITH THE ALLOCATION PERCENTAGES SPECIFIED IN THE "POST CLOSURE MONITORING AND MAINTENANCE AGREEMENT", DATED DECEMBER TENTH, TWO THOUSAND NINE, ENTERED INTO BETWEEN THE MONTGOMERY, OTSEGO, SCHOHARIE COUNTY SOLID WASTE MANAGEMENT AUTHORITY AND THE THREE COUNTIES, PROVIDED HOWEVER, THAT THE BOARD OF DIRECTORS OF THE AUTHORITY SHALL BE AUTHORIZED TO SET ASIDE SUCH FUNDS AS ARE NECESSARY AND PROPER TO SETTLE, PAY, AND OTHERWISE RESOLVE ALL OUTSTANDING ACCOUNTS, CLAIMS, AND OTHER LIABILITIES OF THE AUTHORITY PRIOR TO THE DATE OF DISSOLUTION, AND ANY REMAINDER SHALL BE DISTRIBUTED TO THE

MEMBER COUNTIES PURSUANT TO THE ALLOCATION ESTABLISHED IN THIS PARAGRAPH; AND PROVIDED FURTHER, THAT IN THE EVENT THAT ANY FUNDS SET ASIDE BY THE BOARD OF DIRECTORS TO RESOLVE OUTSTANDING ACCOUNTS, CLAIMS, AND OTHER LIABILITIES OF THE AUTHORITY ARE INSUFFICIENT FOR SUCH PURPOSE, THE COUNTIES SHALL BE RESPONSIBLE FOR THE PAYMENT OF ANY LAWFUL OBLIGATIONS, ACCOUNTS, CLAIMS AND LIABILITIES OF THE AUTHORITY IN ACCORDANCE WITH THE ALLOCATION PERCENTAGES SPECIFIED IN THE AFORESAID "POST CLOSURE MONITORING AND MAINTENANCE AGREEMENT".

(F) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL TRANSFERS PROVIDED FOR IN THIS SECTION SHALL BE WITHOUT REGARD TO APPRAISED VALUE, AND WITHOUT OTHER CONSIDERATION. IT IS HEREBY DETERMINED THAT THE TRANSFERS OF PROPERTY PURSUANT TO THIS SECTION ARE FOR THE BENEFIT OF THE PEOPLE OF THE PARTICIPATING COUNTIES AND THE STATE AND ARE FOR A PUBLIC PURPOSE. THE DISSOLUTION OF THE AUTHORITY AS PROVIDED IN THIS SECTION AND THE TRANSFERS OF PROPERTY AUTHORIZED AND DIRECTED IN THIS SECTION SHALL BE DEEMED TO BE MINISTERIAL ACTS OF AN OFFICIAL NATURE, INVOLVING NO EXERCISE OF DISCRETION, WITHIN THE MEANING OF PARAGRAPH (II) OF SUBDIVISION FIVE OF SECTION 8-0105 OF THE ENVIRONMENTAL CONSERVATION LAW.

3. UPON DISSOLUTION, THE BOOKS AND RECORDS OF THE AUTHORITY SHALL BE DELIVERED TO THE CUSTODY OF THE COUNTY OF SCHOHARIE, AND SHALL BE MADE AVAILABLE, AT REASONABLE TIMES, TO ANY RECEIVER APPOINTED PURSUANT TO THIS SUBDIVISION AND TO AUTHORIZED REPRESENTATIVES OF THE COUNTIES OF MONTGOMERY, OTSEGO AND SCHOHARIE ON REQUEST, AND TO OTHER PERSONS IN ACCORDANCE WITH LAW. THE FINANCES AND ACCOUNTS OF THE AUTHORITY AS OF THE DATE OF DISSOLUTION SHALL BE THE SUBJECT OF A FINAL AUDIT, WHICH SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE AUTHORITIES BUDGET OFFICE, AND ANY ACCOUNTS PAYABLE AND RECEIVABLE, AND ANY CLAIMS, OBLIGATIONS OR OTHER LIABILITIES REMAINING UNSETTLED OR UNRESOLVED AT THE DATE OF DISSOLUTION SHALL BE ASSIGNED TO A RECEIVER TO BE APPOINTED BY THE AUTHORITIES BUDGET OFFICE. UNLESS OTHERWISE AGREED BY THE COUNTIES AND THE AUTHORITIES BUDGET OFFICE, SUCH RECEIVER SHALL BE SELECTED FROM A LIST OF QUALIFIED PERSONS MAINTAINED BY THE OFFICE OF COURT ADMINISTRATION AND THE COMPENSATION AND CONDUCT OF SUCH RECEIVER SHALL BE GOVERNED BY THE RULES OF THE CHIEF JUDGE. SAID RECEIVER SHALL BE AUTHORIZED TO PAY, COLLECT, SETTLE OR RESOLVE ALL SUCH ACCOUNTS, CLAIMS, OBLIGATIONS AND LIABILITIES IN ACCORDANCE WITH LAW, AND TO DEFEND AND MAINTAIN ACTIONS AT LAW WITH RESPECT THERETO IN THE NAME OF THE AUTHORITY.

S 4. This act shall take effect immediately.