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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. COLTON, STIRPE, DINOWITZ, SCHIMEL, PERRY, MILLMAN -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, GLICK, GORDON, GOTTFRIED, KOON, MAISEL, MAYERSOHN, REILLY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring contractors to recycle construction and demolition site waste

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

Section 1. Legislative intent. The purpose of this act is to significantly reduce the amount of waste produced by construction and demolition activities in the state of New York. There are many opportunities to reduce or recycle materials from construction and demolition, including metals, cardboard, drywall, glass, wood and asphalt. This act is consistent with the goals of the state's solid waste management plan, complementing other recycling and recovery programs currently in effect.

S 2. The environmental conservation law is amended by adding a new section 27-0721 to read as follows:

S 27-0721. CONSTRUCTION AND DEMOLITION SITE WASTE RECYCLING.

1. DEFINITIONS. AS USED IN THIS SECTION:

(A) "CONTRACTOR" MEANS A GENERAL CONTRACTOR AND SHALL ALSO INCLUDE ANY SUBCONTRACTOR ENGAGED IN THE DEMOLITION OR WRECKING OF A STRUCTURE FOR WHICH A PERMIT IS REQUIRED.

(B) "CONSTRUCTION AND DEMOLITION DEBRIS" SHALL INCLUDE, BUT NOT BE LIMITED TO, METALS, CARDBOARD, DRYWALL, GLASS, WOOD, CONCRETE, BRICK AND ASPHALT, BUT SHALL NOT INCLUDE ANY MATERIAL THAT IS CONTAMINATED BY LEAD, ASBESTOS OR OTHER HAZARDOUS MATERIAL SUCH THAT RECYCLING THEREOF WOULD BE ILLEGAL OR UNFEASIBLE.

(C) "RECYCLER" MEANS A RECYCLING FACILITY, TRANSFER STATION OR OTHER WASTE HANDLING FACILITY PERMITTED PURSUANT TO THIS ARTICLE WHICH ACCEPTS

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

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CONSTRUCTION AND DEMOLITION DEBRIS FOR RECYCLING OR FOR FURTHER TRANSFER TO A RECYCLING FACILITY.

(D) "REUSE" MEANS (I) THE ON-SITE USE OF REPROCESSED CONSTRUCTION AND DEMOLITION DEBRIS IF THE USE OF SUCH DEBRIS IS AUTHORIZED BY THE COMMISSIONER; AND (II) THE OFF-SITE REDISTRIBUTION OF A MATERIAL WHICH WOULD OTHERWISE BE DISPOSED OF, FOR USE IN THE SAME OR SIMILAR FORM AS IT WAS PRODUCED.

2. APPLICABILITY. (A) CONTRACTORS SHALL RECYCLE OR REUSE CONSTRUCTION AND DEMOLITION DEBRIS PRODUCED ON SITE AS PART OF CONSTRUCTION OR DEMOLITION ACTIVITIES BY MEETING THE FOLLOWING REQUIREMENTS:

(I) ON A PROJECT THAT IS ISSUED A PERMIT WITH AN APPLICATION DATE WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION, THE CONTRACTOR SHALL CAUSE TO BE RECYCLED OR REUSED AT LEAST TWENTY-FIVE PERCENT OF THE CONSTRUCTION AND DEMOLITION DEBRIS, AS MEASURED BY WEIGHT, PRODUCED ON SITE.

(II) ON A PROJECT THAT IS ISSUED A PERMIT WITH AN APPLICATION DATE A YEAR OR MORE AFTER THE EFFECTIVE DATE OF THIS SECTION, THE CONTRACTOR SHALL CAUSE TO BE RECYCLED OR REUSED AT LEAST FIFTY PERCENT OF THE CONSTRUCTION AND DEMOLITION DEBRIS, AS MEASURED BY WEIGHT, PRODUCED ON SITE.

(B) THE FOLLOWING PROJECTS SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION:

(I) CONSTRUCTION OF NEW RESIDENTIAL BUILDINGS WITH FOUR OR MORE DWELLING UNITS;

(II) CONSTRUCTION OF NEW NON-RESIDENTIAL BUILDINGS, OTHER THAN PROJECTS FOR WHICH THE TOTAL AREA IS FOUR THOUSAND SQUARE FEET OR LESS;

(III) ANY REHABILITATION OF NON-RESIDENTIAL BUILDINGS OF MORE THAN FOUR THOUSAND SQUARE FEET THAT WILL REQUIRE CERTIFICATION OF OCCUPANCY TO BE ISSUED FROM THE APPROPRIATE CITY, TOWN OR VILLAGE DEPARTMENT;

(IV) DEMOLITION OF RESIDENTIAL BUILDINGS WITH FOUR OR MORE DWELLING UNITS THAT INCLUDES THE DEMOLITION OF AT LEAST ONE OUTSIDE WALL; AND

(V) DEMOLITION OF NON-RESIDENTIAL BUILDINGS, OTHER THAN PROJECTS FOR WHICH THE TOTAL AREA IS FOUR THOUSAND SQUARE FEET OR LESS.

(C) A PROJECT SHALL BE EXEMPT FROM THIS SECTION IF ONLY A PLUMBING PERMIT OR ONLY AN ELECTRICAL PERMIT IS REQUIRED FOR SUCH PROJECT.

3. CONTRACTOR RESPONSIBILITIES. (A) WITHIN THIRTY DAYS OF COMPLETION OF A PROJECT, THE CONTRACTOR SHALL SUBMIT DOCUMENTATION TO THE APPROPRIATE CITY, TOWN OR VILLAGE TO REPORT COMPLIANCE WITH THIS SECTION AND THE REGULATIONS PROMULGATED PURSUANT TO THIS SECTION. IF THE CONTRACTOR IS UNABLE TO MEET THE RECYCLING AND REUSE REQUIREMENTS OF THIS SECTION, THE CONTRACTOR MAY APPLY FOR A WAIVER FROM THE CITY, TOWN OR VILLAGE. SUCH DOCUMENTATION SHALL BE IN A FORM AND MANNER DETERMINED BY THE CITY, TOWN OR VILLAGE.

(B) IF A CONTRACTOR IS UNABLE OR REFUSES TO SUBMIT THE REQUIRED DOCUMENTATION, A PROPERTY OWNER MAY SUBMIT A WAIVER APPLICATION SUPPORTED BY AN AFFIDAVIT THAT THE CONTRACTOR IS UNAVAILABLE OR REFUSES TO PROVIDE THE REQUIRED DOCUMENTATION.

(C) A CONTRACTOR SHALL COMPLY WITH ALL REASONABLE REQUESTS FOR INFORMATION AND DOCUMENTATION BY THE CITY, TOWN OR VILLAGE PURSUANT TO AN AUDIT TO MONITOR COMPLIANCE WITH THIS SECTION. DOCUMENTATION REQUIRED BY THIS SECTION SHALL BE MAINTAINED FOR AT LEAST THREE YEARS.

4. CITY, TOWN AND VILLAGE RESPONSIBILITIES. (A) EACH CITY, TOWN AND VILLAGE SHALL ESTABLISH A PROCEDURE FOR CONTRACTORS TO APPLY FOR WAIVERS OF THE REQUIREMENTS OF THIS SECTION. SUCH REQUIREMENTS SHALL INCLUDE DOCUMENTATION OF THE AMOUNT OF MATERIAL THE CONTRACTOR IS ACTUALLY ABLE

TO RECYCLE OR REUSE AND THE REASON OR REASONS FOR WHICH THE CONTRACTOR CANNOT MEET THE RECYCLING AND REUSE REQUIREMENTS IN THIS SECTION.

(B) A CITY, TOWN OR VILLAGE SHALL NOT ISSUE ANY NEW BUILDING OR DEMOLITION PERMIT TO A CONTRACTOR WHO HAS FAILED TO TIMELY SUBMIT THE REQUIRED DOCUMENTATION WITH RESPECT TO ANY COMPLETED PROJECT, UNTIL SUCH CONTRACTOR EITHER SUBMITS (I) THE REQUIRED DOCUMENTS INCLUDING, WHERE APPLICABLE, PROOF THAT ANY FINE DUE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION HAS BEEN PAID IN FULL, OR (II) PROOF OF A WAIVER ISSUED BY THE CITY, TOWN OR VILLAGE AND, THE PAYMENT OF ANY FINE DUE.

(C) THE CITY, TOWN OR VILLAGE MAY WITHHOLD A CERTIFICATE OF OCCUPANCY FOR A PROJECT UNTIL THE CONTRACTOR SUBMITS EITHER THE REQUIRED DOCUMENTATION INCLUDING, WHERE APPLICABLE, PROOF THAT ANY FINE DUE PURSUANT TO SUBDIVISION FIVE OF THIS SECTION HAS BEEN PAID IN FULL; OR PROOF OF A WAIVER ISSUED BY THE CITY, TOWN OR VILLAGE AND, PAYMENT OF ANY FINE DUE.

(D) THE CITY, TOWN OR VILLAGE IS AUTHORIZED TO CONDUCT AUDITS OF CONTRACTORS TO DETERMINE AND VALIDATE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. THE CITY, TOWN OR VILLAGE MAY REQUEST INFORMATION AND DOCUMENTATION RELEVANT TO SUCH AN AUDIT FROM ANY CONTRACTOR.

(E) THE CITY, TOWN OR VILLAGE IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL CONTAIN PROVISIONS FOR SEEKING AND OBTAINING A WAIVER FROM THE PROVISIONS OF THIS SECTION.

5. FINES AND PENALTIES. (A) CONTRACTORS WHO FAIL TO PROVIDE THE DOCUMENTATION REQUIRED BY THIS SECTION OR WHO HAVE NOT RECEIVED A WAIVER FROM THE CITY, TOWN OR VILLAGE SHALL BE SUBJECT TO A FINE OF FIVE HUNDRED DOLLARS FOR EACH DAY THAT THEY FAIL TO PROVIDE THE INFORMATION OR APPLY FOR A WAIVER.

(B) CONTRACTORS WHO FAIL TO MEET THE RECYCLING OR REUSE REQUIREMENTS OF THIS SECTION AND HAVE APPLIED FOR AND NOT RECEIVED A WAIVER FROM THE CITY, TOWN OR VILLAGE SHALL BE ASSESSED A FINE AS FOLLOWS:

(I) FOR PROJECTS INVOLVING TEN THOUSAND SQUARE FEET OR MORE OF RENOVATED, NEWLY CONSTRUCTED OR DEMOLISHED SPACE, FIVE HUNDRED DOLLARS FOR EACH PERCENTAGE POINT OF DIFFERENCE BETWEEN THE AMOUNT REQUIRED BY THIS SECTION TO BE RECYCLED OR REUSED AND THE AMOUNT ACTUALLY RECYCLED OR REUSED; AND

(II) FOR PROJECTS INVOLVING LESS THAN TEN THOUSAND SQUARE FEET OF RENOVATED, NEWLY CONSTRUCTED OR DEMOLISHED SPACE, TWO HUNDRED FIFTY DOLLARS FOR EACH PERCENTAGE POINT OF DIFFERENCE BETWEEN THE AMOUNT REQUIRED BY THIS SECTION TO BE RECYCLED OR REUSED AND THE AMOUNT ACTUALLY RECYCLED OR REUSED.

(C) THE CITY, TOWN OR VILLAGE MAY MODIFY THE PENALTIES REQUIRED BY PARAGRAPH (A) OR (B) OF THIS SUBDIVISION FOR FAILURE TO PROVIDE DOCUMENTATION OR MEET THE RECYCLING AND REUSE REQUIREMENTS, IF IT FINDS THAT THERE ARE EXTENUATING CIRCUMSTANCES FOR SUCH FAILURES.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.