

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to adding national estuary implementation projects as projects eligible for state funding pursuant to the environmental protection fund

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

1 Section 1. The environmental conservation law is amended by adding a
2 new section 54-1104 to read as follows:
3 S 54-1104. NATIONAL ESTUARY IMPLEMENTATION PROJECTS.
4 AS USED IN THIS TITLE, A NATIONAL ESTUARY IMPLEMENTATION PROJECT SHALL
5 MEAN THOSE PROJECTS WHICH SERVE A PUBLIC PURPOSE DESIGNED TO IMPROVE
6 SURFACE WATER QUALITY, UNDERTAKEN BY A STATE, MUNICIPALITY OR
7 NOT-FOR-PROFIT CORPORATION WHICH DEMONSTRATES TO THE COMMISSIONER'S
8 SATISFACTION THAT IT IS FINANCIALLY AND OTHERWISE CAPABLE OF COMPLETING
9 SUCH PROJECT, WHERE SUCH PROJECT HAS BEEN RECOMMENDED OR APPROVED AS
10 PART OF AN ACTION PLAN OR COMPREHENSIVE MANAGEMENT PLAN UNDER THE
11 NATIONAL ESTUARY PLAN FOR LONG ISLAND SOUND, PECONIC BAY, OR NEW YORK
12 HARBOR/NEW YORK BIGHT.
13 S 2. Section 54-1105 of the environmental conservation law, as added
14 by chapter 610 of the laws of 1993, is amended to read as follows:
15 S 54-1105. State assistance payments for coastal rehabilitation AND
16 NATIONAL ESTUARY IMPLEMENTATION projects.
17 1. The commissioner is authorized to provide on a competitive basis,
18 within amounts appropriated, state assistance payments to a municipality
19 or a not-for-profit corporation toward the cost of any coastal rehabili-

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

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1 tation OR NATIONAL ESTUARY IMPLEMENTATION project approved by the
2 commissioner.

3 2. The commissioner and a municipality or not-for-profit corporation
4 may enter into a contract for the undertaking of a coastal rehabili-
5 tation OR NATIONAL ESTUARY IMPLEMENTATION project. Such project shall be
6 recommended to the commissioner by the governing body of the munici-
7 pality or not-for-profit corporation as that term is defined pursuant to
8 subdivision six of section 54-0101 OF THIS ARTICLE, and when approved by
9 the commissioner, undertaken by the municipality or not-for-profit
10 corporation pursuant to this article and any other applicable provisions
11 of law.

12 3. State assistance payments shall not exceed fifty percent of the
13 project cost or two million dollars, whichever is less. Such costs are
14 subject to final computation and determination by the commissioner upon
15 completion of the project, and shall not exceed the maximum eligible
16 cost set forth in the contract.

17 4. Prior to processing applications for state assistance payments
18 toward the cost of coastal rehabilitation OR NATIONAL ESTUARY IMPLEMEN-
19 TATION projects, the commissioner shall promulgate rules and regulations
20 which shall include criteria for determining eligible expenditures and
21 procedures for governing the commitment and disbursement of funds appro-
22 priated in accordance with this title. The commissioner shall also
23 promulgate rules and regulations which shall include application proce-
24 dures, review processes, and project approval guidelines and criteria
25 consistent with section 54-1107 OF THIS TITLE.

26 S 3. The two undesignated paragraphs of section 54-1107 of the envi-
27 ronmental conservation law are designated subdivision 1 and a new subdivi-
28 sion 2 is added to read as follows:

29 2. IN THE CASE OF NATIONAL ESTUARY IMPLEMENTATION PROJECTS, A MUNICI-
30 PALITY OR NOT-FOR-PROFIT CORPORATION, UPON APPROVAL OF ITS GOVERNING
31 BOARD, MAY SUBMIT AN APPLICATION TO THE COMMISSIONER, IN SUCH FORM AND
32 CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE, FOR STATE
33 ASSISTANCE PAYMENTS TOWARDS THE COST OF A PROJECT WHICH IS WITHIN THE
34 STATE OF NEW YORK AND WHICH IS ELIGIBLE FOR STATE ASSISTANCE PURSUANT TO
35 THIS TITLE. THE COMMISSIONER SHALL REVIEW SUCH APPLICATION AND MAY
36 APPROVE, DISAPPROVE, OR RECOMMEND MODIFICATIONS THERETO CONSISTENT WITH
37 APPLICABLE LAW, CRITERIA, STANDARDS, OR RULES AND REGULATIONS RELATIVE
38 TO SUCH PROJECTS. SUCH CRITERIA AND STANDARDS SHALL INCLUDE, BUT NOT BE
39 LIMITED TO INCLUSION IN AN ACTION PLAN OR COMPREHENSIVE MANAGEMENT PLAN
40 PREPARED UNDER THE NATIONAL ESTUARY PROGRAM.

41 UPON APPROVAL OF A PROJECT APPLICATION, A MUNICIPALITY OR NOT-FOR-PRO-
42 FIT CORPORATION SHALL ENTER INTO A CONTRACT, AS FURTHER PROVIDED FOR
43 WITHIN THIS ARTICLE, WITH THE COMMISSIONER FOR STATE ASSISTANCE PAYMENTS
44 TOWARDS THE COST OF SUCH PROJECT TO BE RECEIVED PURSUANT TO THIS ARTI-
45 CLE.

46 S 4. Section 54-1109 of the environmental conservation law, as added
47 by chapter 610 of the laws of 1993, is amended to read as follows:

48 S 54-1109. Contracts for state assistance payments for coastal rehabili-
49 tation OR NATIONAL ESTUARY IMPLEMENTATION.

50 1. The commissioner may, in the name of the state, enter into
51 contracts with municipalities or not-for-profit corporations, to provide
52 state assistance payments toward the cost of coastal rehabilitation OR
53 NATIONAL ESTUARY IMPLEMENTATION projects which shall include the follow-
54 ing provisions:

55 a. an estimate of the costs of the project as determined by the
56 commissioner;

1 b. an agreement by the commissioner to make state assistance payments
2 toward the cost of the project by periodically reimbursing the munici-
3 pality or not-for-profit corporation during the progress of project
4 development or following completion of the project as may be agreed upon
5 by the parties, in an amount not to exceed the amounts established else-
6 where in this title; and

7 c. an agreement by the municipality or not-for-profit corporation:

8 (i) to proceed expeditiously with and complete the project as approved
9 by the commissioner;

10 (ii) to undertake and maintain the coastal rehabilitation OR NATIONAL
11 ESTUARY IMPLEMENTATION project in accordance with applicable law and
12 rules and regulations;

13 (iii) to provide for the payment of the municipality's or not-for-pro-
14 fit corporation's share of the cost of the project;

15 (iv) to assume the full cost of any additional elements or continued
16 operation of the project;

17 (v) to repay within one year of notification by the commissioner, any
18 state assistance payments made toward the cost of the project or an
19 equitable portion of such monies declared appropriate by the commission-
20 er, if the municipality or not-for-profit corporation fails to complete
21 the project as approved. No repayment, however, shall be required where
22 the commissioner determines that such failure, disposition or change of
23 use was immediately necessary to protect public health and safety;

24 (vi) to apply for and make reasonable efforts to secure federal
25 assistance for the project; and

26 (vii) to not sell, lease, or otherwise dispose of or use lands reha-
27 bilitated under this title for any purpose inconsistent with the project
28 for a period of seven years from the commissioner's approval of the
29 project.

30 2. In connection with each contract, the commissioner shall keep
31 adequate records of the amount of the payment by the state and of the
32 amount of federal assistance, if any, received by the municipality or
33 not-for-profit corporation. Such records shall be retained by the
34 commissioner and shall establish the basis for recalculation of the
35 state payment as required herein.

36 S 5. The undesignated paragraph of section 54-1111 of the environ-
37 mental conservation law is designated subdivision 1 and a new subdivi-
38 sion 2 is added to read as follows:

39 2. THE COMMISSIONER IS AUTHORIZED, WITHIN AMOUNTS APPROPRIATED, TO
40 DIRECTLY UNDERTAKE A NATIONAL ESTUARY IMPLEMENTATION PROJECT PURSUANT TO
41 THIS TITLE WHERE SUCH PROJECT IS RECOMMENDED IN AN ACTION PLAN OR
42 COMPREHENSIVE MANAGEMENT PLAN AND IS ON STATE LANDS OR STATE UNDERWATER,
43 OR IS OTHERWISE UNDER THE CONTROL OF THE STATE.

44 S 6. This act shall take effect on the first of April next succeeding
45 the date on which it shall have become a law.