

4462

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. BRODSKY, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BOYLAND -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to re-establishing the existence of the state superfund management board as the state remedial program oversight board and repealing section 27-1319 of the environmental conservation law relating to the state superfund management board

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

1 Section 1. Section 27-1319 of the environmental conservation law is
2 REPEALED and a new section 27-1319 is added to read as follows:
3 S 27-1319. STATE REMEDIAL PROGRAM OVERSIGHT BOARD.
4 1. A. THERE IS HEREBY CREATED WITHIN THE DEPARTMENT THE "STATE REMEDI-
5 AL PROGRAM OVERSIGHT BOARD", HEREINAFTER REFERRED TO AS THE BOARD. SUCH
6 BOARD SHALL CONSIST OF FOURTEEN MEMBERS, INCLUDING THE COMMISSIONERS OF
7 ENVIRONMENTAL CONSERVATION AND HEALTH, OR THEIR DESIGNEES, AND TWELVE AT
8 LARGE MEMBERS APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE APPOINTED
9 UPON RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND TWO OF
10 WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE SPEAKER OF THE ASSEM-
11 BLY, ONE OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE MINORITY
12 LEADER OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED UPON RECOMMENDA-
13 TION OF THE MINORITY LEADER OF THE ASSEMBLY, AND, OF THE REMAINING SIX,
14 ONE SHALL LIVE WITHIN A MUNICIPALITY WITHIN WHICH EXISTS AN INACTIVE
15 HAZARDOUS WASTE SITE OR SITES, AS LISTED PURSUANT TO SECTION 27-1305 OF
16 THIS TITLE, AND HAVE BEEN INVOLVED IN A CITIZENS' ORGANIZATION THAT HAS
17 A PURPOSE RELATING TO THE SITE OR SITES WITHIN THAT MUNICIPALITY, ONE
18 SHALL LIVE WITHIN AN ENVIRONMENTAL ZONE AS IDENTIFIED PURSUANT TO
19 SECTION 21 OF THE TAX LAW (AS ADDED BY SECTION 1 OF PART H OF CHAPTER 1
20 OF THE LAWS OF 2003) AND HAVE BEEN A MEMBER OF A COMMUNITY BASED ORGAN-
21 IZATION AS DEFINED IN SECTION 970-R OF THE GENERAL MUNICIPAL LAW, TWO

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

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1 SHALL BE REPRESENTATIVES OF ORGANIZATIONS WHOSE PRIMARY FUNCTION IS THE
2 PROTECTION OF NATURAL RESOURCES AND ENHANCEMENT OF THE ENVIRONMENTAL
3 QUALITY OF THE STATE, AND TWO SHALL BE REPRESENTATIVES OF INDUSTRIES
4 THAT GENERATE HAZARDOUS WASTE IN THE STATE. NONE OF THE MEMBERS
5 APPOINTED BY THE GOVERNOR SHALL BE OFFICERS OR EMPLOYEES OF ANY STATE
6 DEPARTMENT OR AGENCY, AND EACH SHALL BE, BY PROFESSIONAL TRAINING OR
7 EXPERIENCE AND ATTAINMENT, QUALIFIED TO ANALYZE AND INTERPRET MATTERS
8 PERTAINING TO HAZARDOUS WASTE MANAGEMENT AND THE REMEDIATION OF INACTIVE
9 HAZARDOUS WASTE DISPOSAL AND BROWNFIELD SITES.

10 B. NO AT LARGE MEMBER OF THE BOARD MAY APPOINT A DESIGNEE TO TEMPORAR-
11 ILY OR PERMANENTLY ASSUME HIS OR HER PLACE ON THE BOARD.

12 2. A. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL SERVE AS
13 CHAIRPERSON OF THE BOARD, AND THE BOARD SHALL ELECT A VICE CHAIRPERSON
14 FROM AMONG THE APPOINTED MEMBERS TO PRESIDE IN THE ABSENCE OF THE CHAIR-
15 PERSON.

16 B. OF THE TWELVE AT LARGE MEMBERS APPOINTED BY THE GOVERNOR, EACH
17 SHALL BE REAFFIRMED OR REAPPOINTED ON JANUARY 31, 2009 AND EVERY TWO
18 YEARS THEREAFTER, AND EACH SHALL HOLD OFFICE UNTIL SUCH TIME AS THE
19 BOARD SHALL CEASE TO EXIST OR UNTIL HE OR SHE SHALL RESIGN OR BE REMOVED
20 IN THE MANNER PROVIDED BY LAW. ANY VACANCY ON THE BOARD SHALL BE FILLED
21 BY APPOINTMENT PURSUANT TO SUBDIVISION 1 OF THIS SECTION FOR THE UNEX-
22 PIRE BALANCE OF THE TERM.

23 3. THE MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION FOR THEIR
24 SERVICES AS MEMBERS OF THE BOARD, EXCEPT THAT EACH OF THEM SHALL BE
25 ALLOWED THE NECESSARY AND ACTUAL EXPENSES WHICH HE OR SHE SHALL INCUR IN
26 THE PERFORMANCE OF HIS OR HER DUTIES UNDER THIS SECTION.

27 4. THE BOARD SHALL HAVE THE POWER, DUTY, AND RESPONSIBILITY TO:

28 A. SERVE AS A WORKING FORUM FOR THE EXCHANGE OF VIEWS, CONCERNS,
29 IDEAS, INFORMATION, AND RECOMMENDATIONS RELATING TO THE STATE'S REMEDIAL
30 PROGRAMS AS PROVIDED IN THIS TITLE AND TITLE 14 OF THIS ARTICLE AND
31 ARTICLE 12 OF THE NAVIGATION LAW.

32 B. REQUEST AND RECEIVE FROM THE DEPARTMENT AND THE DEPARTMENT OF
33 HEALTH AT EACH MEETING OF THE BOARD ANY PORTIONS OF THE PLAN REQUIRED BY
34 SECTION 27-1305 OF THIS TITLE OR ANY REVISIONS, AMENDMENTS, OR CHANGES
35 AVAILABLE FOR REVIEW, AND ANY SUPPORTING DOCUMENTS OR OTHER PERTINENT
36 DATA, AS WELL AS ANY PROPOSED RULES, REGULATIONS, OR GUIDANCE RELATED TO
37 THE STATE'S REMEDIAL PROGRAMS. ALL INFORMATION REQUESTED BY OR PROVIDED
38 TO THE BOARD SHALL ALSO BE PROVIDED TO THE TEMPORARY PRESIDENT OF THE
39 SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRPERSONS OF THE SENATE
40 AND ASSEMBLY ENVIRONMENTAL CONSERVATION COMMITTEES.

41 C. COMPEL THE ATTENDANCE AT EACH MEETING OF THE BOARD OF SUCH PERSON-
42 NEL OF THE DEPARTMENT, OR OF OTHER APPROPRIATE STATE DEPARTMENTS OR
43 AGENCIES, AS MAY REASONABLY BE EXPECTED TO SUPPLY ANY PERTINENT DATA
44 THAT THE BOARD MAY REQUEST.

45 D. MONITOR AND REVIEW THE IMPLEMENTATION OF THE STATE'S REMEDIAL
46 PROGRAMS AS PROVIDED IN THIS TITLE AND TITLE 14 OF THIS ARTICLE AND
47 ARTICLE 12 OF THE NAVIGATION LAW AND THE POLICIES, PROGRAM OBJECTIVES OF
48 THESE PROGRAMS, METHODS, AND STRATEGIES, INCLUDING THOSE OUTLINED IN THE
49 INACTIVE HAZARDOUS WASTE DISPOSAL SITES REGISTRY AND THE STATE INACTIVE
50 HAZARDOUS WASTE REMEDIAL PLAN AS REQUIRED BY SECTION 27-1305 OF THIS
51 TITLE, AS WELL AS INFORMATION WHICH THE BOARD MAY ACQUIRE FROM OTHER
52 SOURCES.

53 E. REVIEW THE HAZARDOUS WASTE SITE REMEDIATION REMAINING TO BE
54 COMPLETED UNDER THE STATE INACTIVE HAZARDOUS WASTE REMEDIAL PLAN AS
55 UPDATED, THE ESTIMATE OF THE COSTS WHICH WOULD BE INCURRED IN THE
56 COMPLETION OF THIS REMEDIATION, THE SCHEDULE UNDER WHICH THE COSTS WILL

1 BE INCURRED, AND THE REVENUES AND RESOURCES EXPECTED TO BE AVAILABLE TO
2 MEET THESE COSTS.

3 F. REVIEW AND EVALUATE THE APPROPRIATE STATE AND INDUSTRY CONTRIBUTION
4 TO THE INACTIVE HAZARDOUS WASTE SITE REMEDIAL PROGRAM, THE BROWNFIELD
5 CLEANUP PROGRAM ESTABLISHED PURSUANT TO TITLE 14 OF THIS ARTICLE, AND
6 THE OIL SPILL CLEANUP PROGRAM ESTABLISHED PURSUANT TO ARTICLE 12 OF THE
7 NAVIGATION LAW.

8 G. BASED UPON ITS MONITORING, REVIEWING, AND OTHER INFORMATION AVAIL-
9 ABLE TO IT, THE BOARD SHALL REPORT TO THE GOVERNOR AND TO THE LEGISLA-
10 TURE ON OR BEFORE JANUARY FIRST OF EACH YEAR ITS ASSESSMENT OF THE
11 IMPLEMENTATION OF THE STATE'S REMEDIAL PROGRAMS AS PROVIDED IN THIS
12 TITLE AND TITLE 14 OF THIS ARTICLE AND ARTICLE 12 OF THE NAVIGATION LAW,
13 TOGETHER WITH ITS COMMENTS, SUGGESTIONS, AND RECOMMENDATIONS REGARDING
14 THE PROGRAMS, THEIR IMPLEMENTATION, AVAILABLE FUNDING AND RESOURCES, AND
15 THE NEED FOR STEPS TO ENSURE THE FUTURE AVAILABILITY OF FUNDING.

16 5. A. THE BOARD SHALL:

17 1. MEET AT LEAST QUARTERLY;

18 2. KEEP A RECORD OF ALL ITS PROCEEDINGS AND PROVIDE SUCH RECORD TO THE
19 PUBLIC UPON REQUEST; AND

20 3. DETERMINE THE RULES OF ITS OWN PROCEDURES.

21 B. SEVEN MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANS-
22 ACTION OF ANY BUSINESS OF THE BOARD.

23 6. STAFF SERVICES, INCLUDING RECORDING OF BOARD PROCEEDINGS, SHALL BE
24 PERFORMED BY PERSONNEL OF THE DEPARTMENT, OR SUCH STATE DEPARTMENTS OR
25 OTHER AGENCIES AS THE CHAIRPERSON DEEMS APPROPRIATE OR DESIRABLE.

26 7. FOR THE PURPOSES OF THIS SECTION, THE AT LARGE MEMBERS OF THE BOARD
27 SHALL BE CONSIDERED OFFICERS OR EMPLOYEES OF PUBLIC ENTITIES AND SHALL
28 BE AFFORDED SUCH DEFENSE AND INDEMNIFICATION AS IS PROVIDED PURSUANT TO
29 SECTION 18 OF THE PUBLIC OFFICERS LAW.

30 S 2. The opening paragraph of subdivision 3 of section 27-1305 of the
31 environmental conservation law, as amended by section 3 of part E of
32 chapter 1 of the laws of 2003, is amended to read as follows:

33 The department shall, as soon as possible but in no event later than
34 January first, nineteen hundred eighty-four, and annually thereafter
35 prepare and submit in writing a "state inactive hazardous waste remedial
36 plan," hereinafter referred to as "the plan" to the state [superfund
37 management] REMEDIAL PROGRAM OVERSIGHT board. Such board shall then
38 approve of the plan or make such modification as it is empowered to do
39 pursuant to section 27-1319 of this [chapter] TITLE and submit the
40 approved plan or modified plan, to the governor and the legislature on
41 or before March first, nineteen hundred eighty-four and annually there-
42 after. In preparing, compiling and updating the plan, the department
43 shall:

44 S 3. Subdivision 13 of section 97-b of the state finance law, as added
45 by chapter 512 of the laws of 1986, is amended to read as follows:

46 13. Upon the receipt of a certification provided pursuant to subdivi-
47 sion twelve of this section, the state [superfund management] REMEDIAL
48 PROGRAM OVERSIGHT board shall review and analyze the historical pattern
49 of revenue received by the industry fee transfer account and the long
50 term projection of future transfers from such account, and shall report
51 on or before December first of such year to the governor and the legis-
52 lature its recommendations, if any, as to the sources of additional
53 revenues which could be used to supplement the revenues to be received
54 by such fund in order to achieve the equal sharing of debt service costs
55 as implemented in subdivision nine of this section.

56 S 4. This act shall take effect immediately.