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

S. 230 A. 333

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:

Section 1. The environmental conservation law is amended by adding a new section 54-1104 to read as follows:

S 54-1104. NATIONAL ESTUARY IMPLEMENTATION PROJECTS.

AS USED IN THIS TITLE, A NATIONAL ESTUARY IMPLEMENTATION PROJECT SHALL MEAN THOSE PROJECTS WHICH SERVE A PUBLIC PURPOSE DESIGNED TO IMPROVE SURFACE WATER QUALITY, UNDERTAKEN BY A STATE, MUNICIPALITY OR NOT-FOR-PROFIT CORPORATION WHICH DEMONSTRATES TO THE COMMISSIONER'S SATISFACTION THAT IT IS FINANCIALLY AND OTHERWISE CAPABLE OF COMPLETING SUCH PROJECT, WHERE SUCH PROJECT HAS BEEN RECOMMENDED OR APPROVED AS PART OF AN ACTION PLAN OR COMPREHENSIVE MANAGEMENT PLAN UNDER THE NATIONAL ESTUARY PLAN FOR LONG ISLAND SOUND, PECONIC BAY, OR NEW YORK HARBOR/NEW YORK BIGHT.

S 2. Section 54-1105 of the environmental conservation law, as added by chapter 610 of the laws of 1993, is amended to read as follows:

S 54-1105. State assistance payments for coastal rehabilitation AND NATIONAL ESTUARY IMPLEMENTATION projects.

1. The commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality 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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tation OR NATIONAL ESTUARY IMPLEMENTATION project approved by the commissioner.

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

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

4. Prior to processing applications for state assistance payments toward the cost of coastal rehabilitation OR NATIONAL ESTUARY IMPLEMENTATION projects, the commissioner shall promulgate rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria consistent with section 54-1107 OF THIS TITLE.

S 3. The two undesignated paragraphs of section 54-1107 of the environmental conservation law are designated subdivision 1 and a new subdivision 2 is added to read as follows:

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

UPON APPROVAL OF A PROJECT APPLICATION, A MUNICIPALITY OR NOT-FOR-PROFIT CORPORATION SHALL ENTER INTO A CONTRACT, AS FURTHER PROVIDED FOR WITHIN THIS ARTICLE, WITH THE COMMISSIONER FOR STATE ASSISTANCE PAYMENTS TOWARDS THE COST OF SUCH PROJECT TO BE RECEIVED PURSUANT TO THIS ARTICLE.

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

S 54-1109. Contracts for state assistance payments for coastal rehabilitation OR NATIONAL ESTUARY IMPLEMENTATION.

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

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

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or not-for-profit corporation during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

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

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

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

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

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

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

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

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

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

S 5. The undesignated paragraph of section 54-1111 of the environmental conservation law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

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

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