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

4952

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the environmental conservation law, in relation to liens against expenditures

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 27-1325 to read as follows:

S 27-1325. LIENS AGAINST EXPENDITURES.

1. ENVIRONMENTAL LIEN. (A) THE STATE OF NEW YORK SHALL BE ENTITLED TO A LIEN UPON ALL REAL PROPERTY OF ANY PERSON FROM WHOM THE STATE MAY RECOVER COSTS UNDER SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW OR ANY PROVISION OF THIS CHAPTER FOR ANY OR ALL EXPENDITURES MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW. THIS LIEN SHALL CONSTITUTE A CONTINUING REGULATORY OBLIGATION IMPOSED BY THE STATE IN SUPPORT OF ITS GOVERNMENTAL INTEREST IN PUBLIC HEALTH AND SAFETY AND IN THE ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER.

(B) AN ENVIRONMENTAL LIEN SHALL ATTACH WHEN:

(1) EXPENDITURES ARE MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW;

(2) THE PERSON OR PERSONS REFERRED TO IN PARAGRAPH (A) OF THIS SUBDIVISION FAILS TO PAY SUCH COSTS WITHIN NINETY DAYS AFTER A WRITTEN DEMAND THEREFOR BY THE DEPARTMENT IS MAILED BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED; AND

(3) A NOTICE OF ENVIRONMENTAL LIEN IS FILED AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION; PROVIDED, HOWEVER, THAT A COPY OF THE NOTICE OF ENVIRONMENTAL LIEN IS SERVED UPON THE OWNER OF THE REAL PROPERTY SUBJECT TO THE ENVIRONMENTAL LIEN WITHIN THIRTY DAYS OF SUCH FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION ELEVEN OF THE LIEN LAW.

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

LBD05150-01-9

(C) AN ENVIRONMENTAL LIEN SHALL CONTINUE AGAINST THE REAL PROPERTY UNTIL:

(1) THE EXPENDITURES MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW ARE RECOVERED OR BECOME UNRECOVERABLE;

(2) THE LIEN IS RELEASED BY THE COMMISSIONER PURSUANT TO THIS SUBDIVISION;

(3) THE LIEN IS DISCHARGED BY PAYMENT OF MONEYS INTO COURT; OR

(4) THE LIEN IS OTHERWISE VACATED BY COURT ORDER.

(D) UPON THE OCCURRENCE OF ANY OF THE SUBPARAGRAPHS OF PARAGRAPH (C) OF THIS SUBDIVISION, EXCEPT WHERE THE LIEN IS VACATED BY COURT ORDER, THE COMMISSIONER SHALL EXECUTE THE RELEASE OF AN ENVIRONMENTAL LIEN AND FILE THE RELEASE AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION. THE COMMISSIONER MAY RELEASE AN ENVIRONMENTAL LIEN WHERE:

(1) A LEGALLY ENFORCEABLE AGREEMENT SATISFACTORY TO THE COMMISSIONER HAS BEEN EXECUTED RELATING TO REMEDIATION OF THE SITE AND DAMAGE COSTS OR REIMBURSING THE FUND FOR EXPENDITURES MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW; OR

(2) THE ATTACHMENT OR ENFORCEMENT OF THE ENVIRONMENTAL LIEN IS DETERMINED BY THE COMMISSIONER NOT TO BE IN THE PUBLIC INTEREST.

(E) AN ENVIRONMENTAL LIEN IS SUBJECT TO THE RIGHTS OF ANY OTHER PERSON, INCLUDING AN OWNER, PURCHASER, HOLDER OF A MORTGAGE OR SECURITY INTEREST, OR JUDGMENT LIEN CREDITOR, WHOSE INTEREST IS PERFECTED BEFORE A LIEN NOTICE HAS BEEN FILED AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION.

2. ENVIRONMENTAL LIEN NOTICE; CONTENTS. A NOTICE OF ENVIRONMENTAL LIEN MUST STATE:

(A) THAT THE LIENOR IS THE STATE OF NEW YORK;

(B) THE NAME OF THE RECORD OWNER OF THE REAL PROPERTY ON WHICH THE ENVIRONMENTAL LIEN HAS ATTACHED;

(C) THE REAL PROPERTY SUBJECT TO THE LIEN, WITH A DESCRIPTION THEREOF SUFFICIENT FOR IDENTIFICATION;

(D) THAT THE REAL PROPERTY DESCRIBED IN THE NOTICE IS PROPERTY OF A PERSON FROM WHOM THE STATE MAY RECOVER COSTS UNDER SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW OR ANY PROVISION OF THIS CHAPTER FOR ANY OR ALL EXPENDITURES MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW;

(E) THAT THE OWNER IS POTENTIALLY RESPONSIBLE FOR SUCH COSTS AS DESCRIBED IN PARAGRAPH (D) OF THIS SUBDIVISION; AND

(F) THAT AN ENVIRONMENTAL LIEN HAS ATTACHED TO THE DESCRIBED REAL PROPERTY.

3. FILING OF NOTICE OF ENVIRONMENTAL LIEN; FILING OF RELEASE. (A) A NOTICE OF ENVIRONMENTAL LIEN SHALL BE FILED WITHIN SIX YEARS FROM THE TIME EXPENDITURES ARE MADE BY THE STATE IN ACCORDANCE WITH THIS TITLE OR SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW IN THE CLERK'S OFFICE OF THE COUNTY WHERE THE PROPERTY IS SITUATED. IF SUCH PROPERTY IS SITUATED IN TWO OR MORE COUNTIES, THE NOTICE OF ENVIRONMENTAL LIEN SHALL BE FILED IN THE OFFICE OF THE CLERK OF EACH OF SUCH COUNTIES. THE NOTICE OF LIEN SHALL BE INDEXED BY THE COUNTY CLERK IN ACCORDANCE WITH THE PROVISIONS OF SECTION TEN OF THE LIEN LAW.

(B) A RELEASE OF AN ENVIRONMENTAL LIEN SHALL BE FILED IN THE CLERK'S OFFICE OF EACH COUNTY WHERE THE NOTICE OF ENVIRONMENTAL LIEN WAS FILED AND SHALL BE INDEXED IN THE MANNER PRESCRIBED FOR INDEXING ENVIRONMENTAL LIENS.

4. ENFORCEMENT OF ENVIRONMENTAL LIEN. AN ENVIRONMENTAL LIEN MAY BE ENFORCED AGAINST THE PROPERTY SPECIFIED IN THE NOTICE OF ENVIRONMENTAL

LIEN, AND AN ENVIRONMENTAL LIEN MAY BE VACATED OR DISCHARGED, AS PRESCRIBED IN ARTICLE THREE OF THE LIEN LAW; PROVIDED, HOWEVER, THAT NOTHING IN THIS ARTICLE OR IN ARTICLE THREE OF THE LIEN LAW SHALL AFFECT THE RIGHT OF THE STATE TO BRING AN ACTION TO RECOVER COSTS AS PROVIDED FOR IN SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW OR THIS CHAPTER.

5. AMOUNTS RECEIVED TO SATISFY LIEN. AMOUNTS RECEIVED BY THE COMMISSIONER TO SATISFY ALL OR PART OF AN ENVIRONMENTAL LIEN SHALL BE DEPOSITED IN THE STATE TREASURY AND CREDITED TO THE HAZARDOUS WASTE REMEDIAL FUND ESTABLISHED IN SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW.

S 2. This act shall take effect immediately.