

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. MARCELLINO -- 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 directing the commissioner of environmental conservation to prepare a report on the impact of on-site sewage treatment systems on the waters of the state and on the public health; and to amend the public health law, in relation to regulation of residential on-site wastewater treatment systems

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

1 Section 1. Subdivision 2 of section 3-0301 of the environmental
2 conservation law is amended by adding a new paragraph dd to read as
3 follows:
4 DD. IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, PREPARE A REPORT
5 TO THE GOVERNOR AND THE LEGISLATURE ON THE IMPACT ON THE WATERS OF THE
6 STATE AND THE IMPACT ON PUBLIC HEALTH FROM NUTRIENT LOADING AND OTHER
7 CONTAMINANTS, INCLUDING PATHOGENS, CAUSED BY ON-SITE SEWAGE TREATMENT
8 SYSTEMS, AND THE STEPS BEING TAKEN AND RECOMMENDATIONS FOR ADDITIONAL
9 ACTIONS NECESSARY TO PROTECT THE WATERS AND PUBLIC HEALTH FROM SUCH
10 IMPACTS. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO MAPS OF AREAS
11 SENSITIVE TO NUTRIENT LOADING THAT INCLUDE THE PERCENT AND ACREAGE OF
12 WETLANDS AND OF AQUATIC SYSTEMS IN SUCH AREAS, AS WELL AS SOIL TYPES,
13 THE PERCENT OF SLOPES AND ANY OTHER QUANTITATIVE OR DESCRIPTIVE INFORMA-
14 TION THAT IS RELEVANT. SUCH REPORT SHALL INCLUDE A RANKING OF THE
15 SIGNIFICANCE OF THE ENVIRONMENTAL AND PUBLIC HEALTH IMPACTS CAUSED BY
16 ON-SITE WASTEWATER TREATMENT SYSTEMS IN RELATION TO OTHER KNOWN CONTAM-
17 INATION PROBLEMS. EXPERIENCES IN OTHER STATES AND COSTS AND BENEFITS
18 SHALL BE EVALUATED IN MAKING RECOMMENDATIONS. SUCH REPORT SHALL BE
19 COMPLETED BY THE DEPARTMENT AND SUBMITTED TO THE GOVERNOR AND THE STATE
20 LEGISLATURE WITHIN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

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

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1 S 2. The public health law is amended by adding a new article 12-A to
2 read as follows:

3 ARTICLE 12-A
4 WATER QUALITY

5 SECTION 1250. DEFINITIONS.

6 1251. RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS.

7 S 1250. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

8 1. "ALTERNATIVE SYSTEM" SHALL MEAN A WASTEWATER TREATMENT SYSTEM THAT
9 INCLUDES COMPONENTS DIFFERENT FROM THOSE TYPICALLY USED IN A CONVEN-
10 TIONAL SEPTIC TANK AND SUBSURFACE WASTEWATER INFILTRATION SYSTEM.

11 2. "CONVENTIONAL SYSTEM" SHALL MEAN AN ABSORPTION TRENCH TYPE OF
12 SYSTEM THAT IS DESIGNED BY A CERTIFIED PROFESSIONAL TO MEET THE MINIMUM
13 REQUIREMENTS OF ALL SITE AND PUBLIC HEALTH STANDARDS. SUCH SYSTEM MAY
14 INCLUDE A SYSTEM DESIGNED FOR PHOSPHORUS AND NITROGEN REMOVAL TO PROTECT
15 WATER QUALITY IN ADDITION TO MEETING THE MINIMUM REQUIREMENTS OF ALL
16 SITE AND PUBLIC HEALTH STANDARDS.

17 3. "RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEM" OR "SYSTEM" SHALL
18 MEAN A SYSTEM SERVING A RESIDENCE THAT PROVIDES FOR THE TREATMENT AND/OR
19 DISPOSITION OF THE COMBINATION OF HUMAN AND HOUSEHOLD WASTE WITH WATER
20 NOT EXCEEDING ONE THOUSAND GALLONS PER DAY.

21 4. "SEEPAGE PIT" SHALL MEAN A COVERED PIT WITH AN OPEN-JOINTED OR
22 PERFORATED LINING THROUGH WHICH SEPTIC TANK EFFLUENT SEEPS INTO THE
23 SURROUNDING SOIL.

24 S 1251. RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS. 1. THE
25 SITING OF RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS SHALL BE
26 SUBJECT TO THE FOLLOWING REQUIREMENTS:

27 (A) THE DESIGN OF ALL NEW SYSTEMS SHALL BE APPROVED BY A PERSON CERTI-
28 FIED BY THE DEPARTMENT TO INSTALL, DESIGN OR INSPECT ON-SITE WASTE
29 TREATMENT SYSTEMS;

30 (B) NO NEW CONVENTIONAL SYSTEM SHALL BE CONSTRUCTED LESS THAN ONE
31 HUNDRED FEET FROM ANY STREAM, LAKE, WATERCOURSE, OR WETLAND; PROVIDED
32 HOWEVER, THAT WHEN SEWAGE TREATMENT SYSTEMS ARE LOCATED IN COARSE GRAVEL
33 OR UPGRADE AND IN THE GENERAL PATH OF DRAINAGE TO A WELL, THE CLOSEST
34 PART OF THE TREATMENT SYSTEM SHALL BE AT LEAST TWO HUNDRED FEET AWAY
35 FROM THE WELL;

36 (C) NO NEW SYSTEM SHALL BE INSTALLED ON SITES WITH A SLOPE THAT
37 EXCEEDS FIFTEEN PERCENT;

38 (D) NO NEW SYSTEM SHALL BE INSTALLED THAT UTILIZES SEEPAGE PITS;

39 (E) ALTERNATIVE SYSTEMS DESIGNED OR APPROVED BY A PERSON CERTIFIED BY
40 THE DEPARTMENT TO INSTALL, DESIGN OR INSPECT ON-SITE WASTE TREATMENT
41 SYSTEMS MAY BE CONSTRUCTED FOR THE REPLACEMENT OF AN EXISTING SYSTEM
42 SERVICING EXISTING RESIDENTIAL BUILDINGS ON SITES WITH CONDITIONS THAT
43 WOULD OTHERWISE PRECLUDE SYSTEMS ACCORDING TO THE PROVISIONS OF THIS
44 SECTION; AND

45 (F) IN NEW CONSTRUCTION ALTERNATIVE SYSTEMS MAY BE USED IF ALL
46 PROVISIONS OF THIS SECTION ARE MET. SUCH SYSTEM MUST ALSO ACHIEVE
47 ACCEPTABLE TREATMENT AND DISPERSAL OF WASTEWATER, AS REQUIRED BY THE
48 DEPARTMENT, BUT WHICH MUST NOT BE LESS STRINGENT THAN THAT REQUIRED FOR
49 CONVENTIONAL SYSTEMS.

50 2. AFTER MAY FIRST, TWO THOUSAND THIRTEEN, NO PERSON SHALL ENGAGE IN
51 THE BUSINESS OF ON-SITE WASTE TREATMENT SYSTEM DESIGN, INSTALLATION, OR
52 REPAIR, OR INSPECTION WITHOUT FIRST OBTAINING CERTIFICATION FROM THE
53 DEPARTMENT. SUCH CERTIFICATION SHALL ENCOMPASS PASSING AN EXAMINATION OR
54 EQUIVALENT PROCEDURE OFFERED BY THE NEW YORK STATE ON-SITE WASTEWATER

1 TREATMENT TRAINING NETWORK OR EQUIVALENT PROCEDURE AS APPROVED BY THE
2 DEPARTMENT.

3 3. AFTER MAY FIRST, TWO THOUSAND FOURTEEN, ALL RESIDENTIAL ON-SITE
4 WASTEWATER TREATMENT SYSTEMS SHALL BE SUBJECT TO THE PROVISIONS OF THIS
5 SUBDIVISION.

6 (A) RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS SHALL BE
7 INSPECTED AND APPROVED BY A CERTIFIED INSPECTOR AT THE TIME OF INSTALLA-
8 TION.

9 (B) RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS SHALL BE
10 INSPECTED AND APPROVED BY A CERTIFIED INSPECTOR AT THE TIME OF SALE OR
11 AT THE TRANSFER OF REAL PROPERTY UPON WHICH THE SYSTEM IS LOCATED.

12 (C) UPON INSPECTION OF A RESIDENTIAL ON-SITE WASTEWATER TREATMENT
13 SYSTEM, A CERTIFIED INSPECTOR SHALL PROVIDE THE OWNER WITH A WRITTEN
14 CERTIFICATE OF APPROVAL OR FAILURE, INCLUDING THE REASONS THEREFOR, AND
15 WITHIN THREE BUSINESS DAYS OF INSPECTION THE CERTIFIED INSPECTOR SHALL
16 FILE A COPY OF SUCH CERTIFICATE OF APPROVAL OR FAILURE WITH THE DEPART-
17 MENT OR ITS DELEGATED COUNTY. NO CERTIFICATE OF OCCUPANCY SHALL BE
18 ISSUED FOR A RESIDENCE UNTIL THE SYSTEM IS FOUND TO BE IN COMPLIANCE
19 WITH THE REQUIREMENTS OF THIS SECTION. THE OWNER OF AN EXISTING SYSTEM
20 THAT HAS FAILED AN INSPECTION SHALL HAVE ONE YEAR TO BRING THE SYSTEM
21 INTO COMPLIANCE WITH STATE AND LOCAL PUBLIC HEALTH LAWS THROUGH REPAIR,
22 UPGRADING OR REPLACEMENT, AND THEREAFTER SHALL BE SUBJECT TO THE CIVIL
23 PENALTY ESTABLISHED IN THIS SECTION.

24 (D) THE OWNER OF A RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEM
25 SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED DOLLARS
26 NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION OF THIS SUBDIVI-
27 SION; PROVIDED, HOWEVER, THAT THE PENALTY FOR FAILING TO BRING SUCH AN
28 EXISTING RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEM INTO COMPLIANCE
29 WITH STATE AND LOCAL PUBLIC HEALTH LAWS AFTER THE ONE YEAR PERIOD FOR
30 REPAIR, UPGRADE OR REPLACEMENT SHALL BE ONE HUNDRED DOLLARS A WEEK OR
31 EACH PART OF A WEEK THAT THE OWNER HAS NOT BROUGHT SUCH SYSTEM INTO
32 COMPLIANCE.

33 4. A COUNTY MAY ADOPT STRICTER REQUIREMENTS FOR RESIDENTIAL ON-SITE
34 WASTEWATER TREATMENT SYSTEMS THAN THE REQUIREMENTS OF THIS SECTION OR
35 ANY RULE OR REGULATION OF THE DEPARTMENT RELATING TO SUCH SYSTEMS.

36 5. THE DEPARTMENT MAY DELEGATE THE ADMINISTRATIVE RESPONSIBILITIES
37 INCLUDING THE RECEIPT AND FILING OF INSPECTION REPORTS TO ANY COUNTY
38 THAT CAN ADEQUATELY DEMONSTRATE TO THE DEPARTMENT THAT IT HAS THE CAPAC-
39 ITY TO FULFILL SUCH RESPONSIBILITIES. THE DEPARTMENT SHALL AUDIT THE
40 PROGRAM OF EACH COUNTY THAT HAS BEEN DELEGATED ADMINISTRATIVE RESPONSI-
41 BILITY EVERY FIVE YEARS.

42 6. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF ENVIRON-
43 MENTAL CONSERVATION, SHALL PROMULGATE RULES AND REGULATIONS NECESSARY
44 FOR THE IMPLEMENTATION OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL
45 INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

46 (A) INSPECTION PROTOCOLS INCLUDING SPECIFICATIONS OF WHAT SHALL
47 CONSTITUTE A FAILURE OF A SYSTEM;

48 (B) TRAINING AND CERTIFICATION REQUIREMENTS FOR DESIGNERS, INSTALLERS,
49 AND INSPECTORS, INCLUDING BUT NOT LIMITED TO TRAINING IN SOIL EVALUATION
50 TECHNIQUES AND ON-SITE WASTE SYSTEM SITING CRITERIA; AND

51 (C) PROVISIONS FOR PROVIDING HOMEOWNERS WITH NOTICE OF THE REQUIRE-
52 MENTS OF THIS SECTION.

53 7. NOTWITHSTANDING TITLE NINETEEN OF ARTICLE SEVENTEEN OF THE ENVIRON-
54 MENTAL CONSERVATION LAW AND ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW,
55 IN ADDITION TO THE ENTITIES IDENTIFIED IN THE DEFINITION OF "MUNICI-
56 PALITY" IN PARAGRAPH H OF SUBDIVISION ONE OF SECTION 17-1909 OF THE

1 ENVIRONMENTAL CONSERVATION LAW, A "MUNICIPALITY" SHALL INCLUDE A PERSON
2 REQUIRED TO COMPLY WITH THIS SECTION. A PERSON SEEKING TO COMPLY WITH
3 REQUIREMENTS OF THIS SECTION SHALL BE ELIGIBLE FOR "FINANCIAL ASSISTANCE
4 TO A MUNICIPALITY", AS DEFINED IN SECTION 17-1909 OF THE ENVIRONMENTAL
5 CONSERVATION LAW, FROM THE WATER POLLUTION CONTROL REVOLVING FUND
6 CREATED PURSUANT TO SECTION TWELVE HUNDRED EIGHTY-FIVE-J OF THE PUBLIC
7 AUTHORITIES LAW, FOR COSTS OF THE REPAIR, UPGRADE OR REPLACEMENT OF
8 EXISTING RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS PURSUANT TO
9 THIS SECTION.

10 S 3. This act shall take effect immediately except that section two of
11 this act shall take effect on the first of January next succeeding the
12 date on which it shall have become a law; provided, however, that effec-
13 tive immediately, the addition, amendment, and/or repeal of any rule or
14 regulation necessary for the implementation of section two of this act
15 on its effective date is authorized and directed to be made and
16 completed on or before such effective date.