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

4422

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law, in relation to providing a program to assist in the development of brownfield sites and certain property and adjacent waters that are, or are suspected to be, contaminated with hazardous wastes or hazardous substances; to amend the state finance law, in relation to establishing the environmental remediation indemnification fund; to amend the environmental conservation law, in relation to re-establishing the state superfund management board; and to repeal section 27-1319 of the environmental conservation law relating thereto

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

Section 1. The economic development law is amended by adding a new article 17 to read as follows:

ARTICLE 17

DEVELOPMENT OF CONTAMINATED PROPERTY

SECTION 400. LEGISLATIVE FINDINGS AND DECLARATIONS.
401. DEFINITIONS.
402. DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL.
403. EXECUTIVE BOARD.
404. ESTABLISHMENT OF A PLAN OF INDEMNIFICATION AND AN OFFICE OF INDEMNIFICATION.
405. ENVIRONMENTAL REMEDIATION PROJECTS PURSUANT TO THIS ARTICLE.
406. CRITERIA OF PROGRAM OF INDEMNIFICATION.
407. APPLICATION OF INDEMNIFICATION AND LAND USE CONTROLS.
408. COSTS OF INDEMNIFICATION.
409. RESPONSIBILITY OF RESPONSIBLE PARTIES.

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

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410. LIABILITY LIMITATION AND INDEMNIFICATION.
411. CHANGE OF USE.
412. CONTINUATION OF THE STATE SUPERFUND MANAGEMENT BOARD.
413. COST OF DEMOLITION OF STRUCTURES ON VARIOUS SITES.
414. INDEMNIFICATION FOR RESPONSIBLE DEVELOPER.
415. MUNICIPALITY PARTICIPATION.

S 400. LEGISLATIVE FINDINGS AND DECLARATIONS. THE LEGISLATURE FINDS THAT THE ECONOMIC DEVELOPMENT OF THE STATE AND ITS VARIOUS SUBDIVISIONS IS SERIOUSLY IMPAIRED BY THE PRESENCE OF PROPERTIES THAT ARE, OR ARE SUSPECTED OF BEING, CONTAMINATED WITH HAZARDOUS WASTES OR SUBSTANCES, INCLUDING PROPERTIES THAT ARE COMMONLY KNOWN AS BROWNFIELD SITES. THE LEGISLATURE FINDS THAT MANY OF THESE SITES, WHILE LOCATED IN AREAS THAT WERE USED FOR INDUSTRIAL OR OTHER PURPOSES WHERE CONTAMINATES WERE EMPLOYED OR USED ON SUCH SITES FOR MANUFACTURING, AGRICULTURAL OR STORAGE PURPOSES, ARE ALSO SITES THAT WOULD BE IDEAL FOR THE LOCATION OF NEW INDUSTRIAL, MANUFACTURING, SERVICE, STORAGE, RESIDENTIAL PROJECTS OR OTHER PURPOSES BECAUSE OF THEIR LOCATION, INCLUDING THE CLOSE PROXIMITY OF TRANSPORTATION, WATER, POWER RESOURCES OR OTHER EXISTING INFRASTRUCTURE.

THE LEGISLATURE FURTHER FINDS THAT OWNERS OF SUCH PROPERTIES OR POSSIBLE DEVELOPERS, INCLUDING MUNICIPALITIES, ARE FAILING TO UTILIZE, DEVELOP OR REDEVELOP SUCH PROPERTIES OUT OF FEAR THAT THE OWNERSHIP OF ANY SUCH PROPERTIES MIGHT FORCE UPON THEM EXTENSIVE COSTS, NOT ONLY FOR REMEDIATING SUCH PROPERTIES, BUT ALSO FROM POSSIBLE EXPOSURE TO GOVERNMENTAL OR THIRD PARTY AND/OR PRIVATE PARTY LAWSUITS ARISING FROM PRESENT OR FUTURE CLAIMS OF INJURY FROM CONTAMINATION ALLEGED TO BE ASSOCIATED WITH SUCH PROPERTIES.

THE LEGISLATURE FURTHER FINDS THAT THE LOSS OF THE USE OF SUCH PROPERTIES HAS AN ADVERSE IMPACT UPON THE ABILITY OF THE COMMUNITIES WHERE SUCH PROPERTIES ARE LOCATED TO ATTRACT ENTITIES THAT WOULD BRING EMPLOYMENT AND OTHER ECONOMIC DEVELOPMENT BENEFITS TO SUCH COMMUNITIES. THE LOSS OF THE USE OF THESE PROPERTIES ALSO ADVERSELY IMPACTS THE TAX BASE OF SUCH COMMUNITIES, IMPAIRING THEIR ABILITY TO DELIVER THE MUNICIPAL SERVICES THEY ARE REQUIRED TO DELIVER. THE LEGISLATURE FURTHER FINDS THAT THE IMPAIRMENT OF SUCH LOCALITIES TO ATTRACT DEVELOPMENT AND INCREASE THEIR TAX BASE REQUIRES THEM TO SEEK FURTHER ASSISTANCE FROM THE STATE WHICH IN TURN REDUCES THE STATE'S ABILITY TO FURTHER REDUCE ITS TAX BURDEN AND ITS OWN ABILITY TO ATTRACT MORE DEVELOPMENT WITHIN THE STATE GENERALLY.

THE LEGISLATURE ALSO FINDS THAT THE EARLIER ANY PROBLEM OF CONTAMINATION OF PROPERTY WITHIN THE STATE THAT MIGHT OR MIGHT BE SUSPECTED OF ADVERSELY AFFECTING THE ENVIRONMENT AND THE HEALTH OF THE PEOPLE OF THIS STATE IS INVESTIGATED AND IF FOUND TO BE A FACT, REMEDIATED, THE BETTER IT WILL BE FOR THE HEALTH AND ENVIRONMENT OF THE PEOPLE WITHIN OR VISITING THIS STATE AND WILL ALSO PROVIDE A GREATER OPPORTUNITY TO DEVELOP SUCH PROPERTIES, PROVIDE MORE WORK CIRCUMSTANCES FOR THE PEOPLE OF THIS STATE, AND ASSIST GREATLY IN ECONOMIC DEVELOPMENT, NOT MERELY OF THE LOCALITY WHERE SUCH PROPERTIES HAVE BEEN DEVELOPED, BUT FOR THE STATE AS A WHOLE.

THE LEGISLATURE FINDS THAT WHILE THOSE WHO WOULD CLEAN UP AND DEVELOP SUCH PROPERTIES WANT TO BE ASSURED THAT THE COST THAT THEY WILL INCUR WILL BE LIMITED TO THE COST, IF ANY, OF REMEDIATING THE PROPERTY, SUFFICIENTLY TO PROTECT THE HEALTH AND THE ENVIRONMENT OF THE PEOPLE OF THIS STATE, TAKING INTO CONSIDERATION THE PURPOSE FOR WHICH THE PROPERTY WILL BE USED, AND THAT IF THEY ENTER INTO AN AGREEMENT WITH THE STATE TO DO SUCH REMEDIATION AND ADHERE TO THAT AGREEMENT THAT THEY WILL NOT BE

SUBJECTED TO PAY FOR FURTHER REMEDIATION IN THE FUTURE NOT REQUIRED BY THE AGREEMENT OR THIS ARTICLE OR TO BE SUBJECT TO LAWSUITS BY THE STATE OR ANYONE ELSE FOR CLAIMS OF INJURY FROM CONTAMINATION FROM SUCH PROPERTY EXCEPT CLAIMS FOR DAMAGES FROM THEIR OWN ACTIVITIES SUBSEQUENT TO SUCH REMEDIATION AND EXCEPT THAT NOTHING IN THIS SECTION SHALL BAR PRIVATE CLAIMS AGAINST A RESPONSIBLE PARTY FOR INJURIES CLAIMED TO HAVE BEEN SUFFERED FROM CONTAMINATION FOR WHICH SUCH PARTIES WOULD HAVE BEEN LIABLE PRIOR TO SUCH CLEANUP.

THE LEGISLATURE FURTHER FINDS THAT THE ENVIRONMENTAL COMMUNITY, ON THE OTHER HAND, WANTS THE STATE, REGARDLESS OF THE INTENDED USE OF THE PROPERTY TO HAVE THE PROPERTY REMEDIATED TO AS CLEAN A STANDARD AS POSSIBLE PURSUANT TO PARAGRAPH D OF SUBDIVISION FIVE OF SECTION 27-1313 OF THE ENVIRONMENTAL CONSERVATION LAW AS IT EXISTED ON JANUARY FIRST, TWO THOUSAND NINE, SO THAT SHOULD THE USE CHANGE OR THE SCIENTIFICALLY ACCEPTABLE LEVELS OF EXPOSURE TO CERTAIN TOXIC SUBSTANCES INCREASE THAT SUCH PROPERTIES WILL NOT PRESENT A DANGER TO HEALTH AND ANY SUCH PROBLEM WILL BE REMEDIATED OR ELIMINATED.

THE LEGISLATURE FURTHER FINDS THAT THE STANDARDS SET FOR THE CLEANUP OF CONTAMINATION TODAY ARE BASED ON THE BEST SCIENTIFIC ADVICE CURRENTLY AVAILABLE BUT THAT NO ONE CAN PREDICT WHAT SCIENCE MAY TURN UP IN THE FUTURE TO REQUIRE EITHER THAT NEWLY DISCOVERED TOXINS MUST BE REMEDIATED OR GREATER LEVELS OF REMEDIATION OF VARIOUS TOXINS MAY BE DISCOVERED TO BE NEEDED TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT AND A SYSTEM OF LAND USE CONTROLS TO MONITOR SUCH EVENTUALITIES AND BE ABLE TO ADDRESS SUCH EVENTUALITIES WITHOUT REQUIRING DEVELOPERS OR OTHERS WHO ARE ACTING IN GOOD FAITH TO COMPLY WITH THE REQUIREMENTS OF THE LAW TO BE PENALIZED FOR SUCH CHANGED CONDITIONS.

THE LEGISLATURE THEREFORE, DETERMINES THAT IN ORDER TO ADVANCE THE ECONOMIC DEVELOPMENT OF THIS STATE AND PROTECT THE HUMAN HEALTH AND ENVIRONMENT OF THE PEOPLE OF THE STATE, A DIVISION OF DEVELOPMENT ASSISTANCE, LAND USE CONTROLS AND ENVIRONMENTAL INDEMNIFICATION SHOULD BE ESTABLISHED WITHIN THE DEPARTMENT TO IMPLEMENT A PROGRAM OF INDEMNIFICATION FOR DEVELOPERS OF SUCH PROPERTIES, AND INDEMNIFICATION OF THE ENVIRONMENTAL INTEGRITY OF SUCH PROPERTIES, INCLUDING OVERSIGHT OF LAND USE CONTROLS.

S 401. DEFINITIONS. 1. "DIVISION" SHALL MEAN THE DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL AS ESTABLISHED BY SECTION FOUR HUNDRED TWO OF THIS ARTICLE.

2. "DEVELOPER" SHALL MEAN AN INDIVIDUAL, A PARTNERSHIP, A CO-PARTNERSHIP, A LIMITED LIABILITY COMPANY, A FOR PROFIT CORPORATION OR A NOT-FOR-PROFIT CORPORATION OR A GOVERNMENTAL ENTITY INCLUDING MUNICIPALITIES, AGENCIES, AUTHORITIES OR OTHER PUBLIC CORPORATIONS.

3. "OFFICE OF INDEMNIFICATION" SHALL MEAN THE OFFICE OF INDEMNIFICATION CREATED BY SECTION FOUR HUNDRED FOUR OF THIS ARTICLE AND SHALL INCLUDE ANY INDEMNIFICATION COMPANY, INSURANCE PROVIDER, CASUALTY OR BONDING COMPANY ACTING ON BEHALF OF SUCH OFFICE OF INDEMNIFICATION.

4. "LAND USE CONTROLS" SHALL MEAN ENGINEERING, AND/OR INSTITUTIONAL CONTROLS (INCLUDING DEED RESTRICTIONS).

5. EXCEPT TO THE EXTENT INCONSISTENT WITH THIS ARTICLE, ALL DEFINITIONS OF HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, BROWNFIELDS OR OTHER DEFINITIONS AFFECTING THE ENVIRONMENT OR AN ENVIRONMENTAL STANDARD ESTABLISHED IN THE ENVIRONMENTAL CONSERVATION LAW OR THE PUBLIC HEALTH LAW NOW OR AS AMENDED FROM TIME TO TIME, OR THE RULES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE DEPARTMENT OF HEALTH APPLICABLE THERETO SHALL BE DEEMED TO APPLY TO THE MATTERS TO BE CONSIDERED BY THE DIVISION, EXCEPT THAT THE DIVISION SHALL HAVE STANDING TO

CHALLENGE ANY SUCH RULE OR REGULATION OF EITHER DEPARTMENT IN AN ADMINISTRATIVE HEARING IN SUCH DEPARTMENT PROMULGATING SUCH RULE OR REGULATION OR IN A COURT OF LAW AFTER A DETERMINATION IS MADE AS A RESULT OF SUCH DEPARTMENTAL HEARING.

S 402. DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL. THE COMMISSIONER, IN CONCERT WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, THE COMMISSIONER OF HEALTH, THE STATE COMPTROLLER AND THE DIRECTOR OF THE BUDGET, SHALL ESTABLISH WITHIN THE DEPARTMENT, A DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL WITH AN EXECUTIVE DIRECTOR AND SUCH OTHER PERSONNEL, FROM THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF AUDIT AND CONTROL AND THE DIVISION OF THE BUDGET AS MAY BE REQUIRED TO PERFORM THE DUTIES OF THE DIVISION.

S 403. EXECUTIVE BOARD. THE DIVISION SHALL HAVE AN EXECUTIVE BOARD CONSISTING OF THE COMMISSIONER, WHO SHALL ACT AS CHAIR, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, THE COMMISSIONER OF HEALTH, THE STATE COMPTROLLER AND THE DIRECTOR OF THE BUDGET. EXCEPT AS MAY OTHERWISE BE PROVIDED IN THIS ARTICLE, EACH BOARD MEMBER SHALL HAVE AN EQUAL VOTE IN ANY EXECUTIVE BOARD DECISION.

S 404. ESTABLISHMENT OF A PLAN OF INDEMNIFICATION AND AN OFFICE OF INDEMNIFICATION. THE DIVISION SHALL HAVE AN OFFICE OF INDEMNIFICATION AND ESTABLISH A PLAN TO CARRY OUT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. IN SO DOING THE DIVISION MAY CONTRACT OUT ONE OR MORE DUTIES OF THE OFFICE SUCH AS ACTUARIAL STUDIES, RATE PROJECTIONS, INSPECTION PROGRAMS, AND CLAIMS ADJUSTMENT WITH ONE OR MORE INDEMNIFICATION, INSURANCE, CASUALTY OR BONDING COMPANIES AUTHORIZED TO DO BUSINESS IN THE STATE, AND WITH OFFICES IN THE STATE OR THE STATE INSURANCE FUND, FOR ITS PROGRAM OF INDEMNIFICATION OF ANY DEVELOPER IN ACCORDANCE WITH THE TERMS OF THIS ARTICLE THAT UNDERTAKES A PROJECT TO AND DOES REMEDIATE ANY PROPERTY IN THE STATE TO THE LEVEL REQUIRED BY THE STATE FOR THE INTENDED USE OF THE PROPERTY IN ACCORDANCE WITH A PLAN AGREED TO BY THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH.

S 405. ENVIRONMENTAL REMEDIATION PROJECTS PURSUANT TO THIS ARTICLE. 1. THE DIVISION WITH THE APPROVAL OF THE EXECUTIVE BOARD, PROVIDED THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF HEALTH VOTE IN THE AFFIRMATIVE, MAY ENTER INTO A CONTRACT WITH A DEVELOPER TO UNDERTAKE AN ENVIRONMENTAL REMEDIATION PROJECT.

2. IN ADDITION TO SUCH OTHER TERMS AND CONDITIONS AS THE DIVISION MAY DEEM APPROPRIATE, SUCH CONTRACT SHALL PROVIDE AS FOLLOWS:

(A) AN ESTIMATE OF THE COST OF SUCH PROJECT AS DETERMINED BY THE DIVISION, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF HEALTH;

(B) AN AGREEMENT BY THE DEVELOPER TO PROCEED EXPEDITIOUSLY WITH AND COMPLETE SUCH PROJECT IN ACCORDANCE WITH SUCH AN AGREEMENT BY THE DEVELOPER;

(C) AN AGREEMENT BY THE DEVELOPER THAT IT SHALL PREPARE AND IMPLEMENT A PUBLIC PARTICIPATION PLAN PRIOR TO REMEDIAL ACTIVITIES UNDERTAKEN PURSUANT TO THIS SECTION. THE PLAN SHALL PROVIDE OPPORTUNITIES FOR EARLY, INCLUSIVE PARTICIPATION PRIOR TO THE SELECTION OF A PREFERRED COURSE OF ACTION, SHALL FACILITATE COMMUNICATION, INCLUDING DIALOGUE AMONG THE DEVELOPER, THE MUNICIPALITY WHERE THE REMEDIATION PROJECT SHALL TAKE PLACE, THE DIVISION AND THE INTERESTED PUBLIC, AND SHALL PROVIDE TIMELY AND ACCESSIBLE DISCLOSURE OF INFORMATION. AT A MINIMUM, THE DESIGN OF THE PLAN SHALL TAKE INTO ACCOUNT THE SCOPE AND SCALE OF

THE PROPOSED ENVIRONMENTAL REMEDIATION PROJECT, LOCAL INTEREST AND OTHER RELEVANT FACTORS. THE PLAN SHALL ALSO PROVIDE FOR: ADEQUATE PUBLIC NOTICE OF THE AVAILABILITY OF A DRAFT REMEDIAL PLAN; A FORTY-FIVE DAY PERIOD FOR SUBMISSION OF WRITTEN COMMENTS; A PUBLIC HEARING ON SUCH PLAN IF SUBSTANTIVE ISSUES ARE RAISED BY MEMBERS OF THE AFFECTED COMMUNITY; AND TECHNICAL ASSISTANCE IF SO REQUESTED BY MEMBERS OF THE AFFECTED COMMUNITY. PROVIDED, HOWEVER, THAT THE REQUIREMENTS OF THIS PARAGRAPH SHALL NOT APPLY TO INTERIM REMEDIAL MEASURES UNDERTAKEN AS PART OF AN ENVIRONMENTAL REMEDIATION PROJECT TO ADDRESS EMERGENCY SITE CONDITIONS. IN SUCH INSTANCE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE DEPARTMENT OF HEALTH OR SUCH PERSONS IMPLEMENTING THE INTERIM REMEDIAL MEASURE OR MAKING THE REQUEST SHALL CONDUCT PUBLIC PARTICIPATION ACTIVITIES AS SUCH DEPARTMENTS OR THE DIVISION DEEM NECESSARY AND APPROPRIATE UNDER SUCH CIRCUMSTANCES;

(D) AN AGREEMENT BY THE DEVELOPER THAT IT SHALL PUT INTO PLACE ANY ENGINEERING AND/OR INSTITUTIONAL CONTROLS (INCLUDING DEED RESTRICTIONS) THAT THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH MAY DEEM NECESSARY TO ALLOW THE CONTEMPLATED USE TO PROCEED, THAT SUCH ENGINEERING AND/OR INSTITUTIONAL CONTROLS SHALL BE BINDING ON SUCH DEVELOPER, ANY SUCCESSOR IN TITLE, AND ANY LESSEES AND THAT ANY SUCCESSORS IN TITLE AND ANY LESSEES CANNOT CHALLENGE STATE OR DIVISION ENFORCEMENT OF SUCH CONTROLS;

(E) IN THE EVENT THAT ENGINEERING CONTROLS AND/OR INSTITUTIONAL CONTROLS ARE NECESSARY, THE DEVELOPER AND ITS SUCCESSORS IN TITLE SHALL AGREE TO DEVELOP A PLAN APPROVED BY THE DIVISION, WITH THE CONSENT OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH, WHICH ENSURES THAT SUCH ENGINEERING AND/OR INSTITUTIONAL CONTROLS BE CONTINUALLY MAINTAINED IN THE MANNER REQUIRED BY THE PLAN. FAILURE TO IMPLEMENT SUCH PLAN OR MAINTAIN SUCH CONTROLS SHALL CONSTITUTE A VIOLATION OF SUCH CONTRACT AND SHALL TERMINATE FOR THE DURATION OF SUCH FAILURE THE PROTECTION AFFORDED UNDER THIS ARTICLE;

(F) IN THE EVENT THAT DEED RESTRICTIONS ARE REQUIRED, SUCH DEVELOPER SHALL AGREE TO CAUSE SUCH DEED RESTRICTIONS TO BE RECORDED AND INDEXED AS DECLARATIONS OF RESTRICTIONS IN THE OFFICE OF THE RECORDING OFFICER OF THE COUNTY OR COUNTIES WHERE THE REAL PROPERTY SUBJECT TO SUCH ENVIRONMENTAL REMEDIATION PROJECT IS LOCATED IN THE MANNER PRESCRIBED BY ARTICLE NINE OF THE REAL PROPERTY LAW. SUCH DECLARATION OF RESTRICTION SHALL CONTAIN THE NAME OF THE OWNER OF THE SECTION, BLOCK, AND LOT NUMBER OF SUCH PROPERTY; AND

(G) A PROVISION THAT EXEMPTS A DEVELOPER AND ANY SUCCESSOR IN TITLE FROM THE REQUIREMENT TO OBTAIN ANY STATE OR LOCAL PERMIT OR OTHER AUTHORIZATION FOR ANY ACTIVITY NEEDED TO IMPLEMENT SUCH PROJECT THAT IS CONDUCTED ON THE REAL PROPERTY SUBJECT TO SUCH PROJECT SO LONG AS THE ACTIVITY IS CONDUCTED IN A MANNER WHICH SATISFIES ALL SUBSTANTIVE TECHNICAL REQUIREMENTS APPLICABLE TO LIKE ACTIVITY CONDUCTED PURSUANT TO A PERMIT.

S 406. CRITERIA OF PROGRAM OF INDEMNIFICATION. THE PROGRAM OF INDEMNIFICATION FOR ANY DEVELOPER SHALL BE THAT THE DEVELOPER UNDERTAKES TO AND DOES REMEDIATE ANY PROPERTY TO THE ENVIRONMENTAL REQUIREMENTS FOR THE INTENDED USE OF THE PROPERTY IN ACCORDANCE WITH THE PLAN, WHICH IS PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT, AGREED TO BY THE DEPARTMENT, DIVISION, DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND DEPARTMENT OF HEALTH.

S 407. APPLICATION OF INDEMNIFICATION AND LAND USE CONTROLS. 1. IF THE PLAN OF REMEDIATION IS LESS THAN ONE OF COMPLETE REMEDIATION AND ANY LAND USE CONTROLS ARE REQUIRED, IN ADDITION TO ANY OTHER POWERS THE

DEPARTMENT, THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION OR THE DEPARTMENT OF HEALTH MAY POSSESS BY OPERATION OF LAW, THE DIVISION OR ITS OFFICE OF INDEMNIFICATION SHALL HAVE THE RIGHT AND SHALL MAKE AT LEAST ONE ANNUAL ANNOUNCED INSPECTION AND ONE ANNUAL UNANNOUNCED INSPECTION OF SUCH PROPERTY TO EVALUATE THE EFFECTIVENESS OF SUCH LAND USE CONTROLS AND MAY INSPECT SUCH LAND USE CONTROLS AT ANY OTHER TIME AS IT DEEMS NECESSARY. IN THE EVENT SUCH CONTROLS ARE NOT WORKING OR FOR ANY OTHER REASON THE REMEDIATION IS NOT EFFECTIVE AS SET FORTH IN THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION, THE STATE SHALL REQUIRE THE DEVELOPER (UNLESS OTHERWISE INDEMNIFIED PURSUANT TO SECTION FOUR HUNDRED TEN OF THIS ARTICLE), OR IF THE DEVELOPER IS NOT RESPONSIBLE FOR THE FAILURE OF SUCH CONTROLS BECAUSE OF THE ACT OF A THIRD PARTY, THEN SUCH RESPONSIBLE THIRD PARTY TO REMEDIATE THE PROPERTY, AND IF THE DEVELOPER WHO IS NOT INDEMNIFIED PURSUANT TO THIS ARTICLE OR THE THIRD PARTY RESPONSIBLE FOR THE FAILURE OF SUCH CONTROLS AND FURTHER CONTAMINATION FAILS OR REFUSES TO CORRECT THE LAND USE CONTROL AND REMEDIATE THE PROPERTY WITHIN THE TIME LIMIT SET BY THE DIVISION, THE DIVISION SHALL REFER THE MATTER TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL IMMEDIATELY UNDERTAKE TO REMEDIATE THE PROPERTY PURSUANT TO SECTION 27-1313 OF THE ENVIRONMENTAL CONSERVATION LAW WITH ITS STAFF AND ITS STANDBY CONTRACTORS FOR SUCH REMEDIATION WORK, AND THE COST OF SUCH WORK INCLUDING THE DEPARTMENT'S OVERSIGHT AND MANAGEMENT SHALL BE PAID FROM THE INDEMNIFICATION FUND PROVIDED BY THIS ARTICLE; PROVIDED, HOWEVER THAT THE LEVEL OF CLEAN UP SHALL BE THE LEVEL REQUIRED FOR PURPOSE OF THE USE OF THE PROPERTY PURSUANT TO THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION MADE PURSUANT TO THIS ARTICLE AND NOT THE LEVEL REQUIRED BY PARAGRAPH D OF SUBDIVISION FIVE OF SECTION 27-1313 OF THE ENVIRONMENTAL CONSERVATION LAW AS IT EXISTED ON JANUARY FIRST, TWO THOUSAND NINE. THE COST OF CORRECTING THE LAND USE CONTROLS AND REMEDIATION IF DONE PURSUANT TO THIS SECTION SHALL BE A CHARGE AGAINST THE PARTY CAUSING SUCH PROBLEM UNLESS OTHERWISE INDEMNIFIED UNDER THIS ARTICLE AND THE STATE ON BEHALF OF THE INDEMNIFICATION FUND MAY INSTITUTE A CLAIM OR CAUSE OF ACTION FOR PAYMENT AGAINST SUCH DEVELOPER OR PARTY IN THE SUPREME COURT OF THIS STATE FOR RECOVERY OF SUCH COSTS FROM SUCH PARTY.

2. IF THE PLAN OF REMEDIATION IS ONE THAT REQUIRES COMPLETE REMEDIATION OR OTHERWISE IS NOT SUBJECT TO LAND USE CONTROL REQUIREMENTS, THE OFFICE OF INDEMNIFICATION SHALL HAVE THE RIGHT AND THE DUTY TO INSPECT SUCH PROPERTY FROM TIME TO TIME TO OBSERVE AND REPORT IF THERE ARE ANY CHANGE OF CONDITIONS THAT REQUIRE REMEDIATION. IF THE REPORT FINDS THAT BECAUSE OF CHANGED CONDITIONS FURTHER REMEDIATION IS NEEDED AND THE DEVELOPER OR ITS SUCCESSOR IN TITLE IS INDEMNIFIED UNDER THIS ARTICLE, THE OFFICE OF INDEMNIFICATION SHALL NOTIFY SUCH PARTY AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH AND THE DIVISION AND ENTER INTO AN AGREEMENT WITH THE DEVELOPER OR THE SUCCESSOR IN TITLE TO REMEDIATE SUCH PROPERTY THROUGH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S STANDBY CONTRACTORS AT THE EXPENSE OF THE OFFICE OF INDEMNIFICATION. IF THE CONTAMINATION WAS THE RESULT OF THE ACTS OF THE DEVELOPER OR ITS SUCCESSOR IN INTEREST AFTER THE REMEDIATION PROJECT COVERED BY THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION AND IS NOT COVERED BY THE INDEMNIFICATION SET FORTH IN THIS ARTICLE THEN THE COST OF SUCH A REMEDIATION SHALL BE BORNE BY THE RESPONSIBLE PARTY.

S 408. COSTS OF INDEMNIFICATION. TO DEFRAY THE COST OF INDEMNIFICATION, AN ACTUARIAL STUDY SHALL BE MADE BY THE OFFICE OF INDEMNIFICATION AND A SURCHARGE SHALL BE ADDED TO THE COST OF THE REMEDIATION IN THE AGREEMENT REFERRED TO IN SECTION FOUR HUNDRED FIVE OF THIS ARTICLE.

SUCH SURCHARGE MAY BE IN THE FORM OF A ONE TIME LUMP SUM PAYMENT OR A YEARLY PAYMENT AS DETERMINED BY THE EXECUTIVE BOARD. THE MONIES FROM SUCH SURCHARGE SHALL BE PLACED IN THE ENVIRONMENTAL REMEDIATION INDEMNIFICATION FUND ESTABLISHED PURSUANT TO SECTION NINETY-NINE-Q OF THE STATE FINANCE LAW AND MAY BE INVESTED AND REINVESTED PURSUANT TO THE LAWS OF THIS STATE TO BUILD A FUND ACTUARIALLY SUFFICIENT TO COVER THE ANTICIPATED NEEDS OF SUCH FUND. THE EXECUTIVE BOARD MAY FROM TIME TO TIME ADJUST SUCH SURCHARGE IN ACCORDANCE WITH ANY CHANGED CONDITIONS, AND THE STATE MAY FROM TIME TO TIME THROUGH ITS BUDGETARY PROCESS MAKE APPROPRIATIONS TO THE FUND TO MAINTAIN THE FUND'S INTEGRITY.

S 409. RESPONSIBILITY OF RESPONSIBLE PARTIES. NOTHING IN THIS ARTICLE SHALL RELIEVE A RESPONSIBLE PARTY FROM THE COST OF REMEDIATION EXCEPT THAT THE EXECUTIVE BOARD MAY COMPROMISE ANY CLAIM ON ADVICE OF COUNSEL FOR GOOD AND SUFFICIENT REASON, SUCH AS FUTILITY OF RECOVERY OR DECISIONS AS TO THE STRENGTH OR WEAKNESS OF EACH INDIVIDUAL CASE. THE EXECUTIVE BOARD MAY ALSO FOR GOOD AND SUFFICIENT REASONS RELIEVE A MUNICIPALITY FROM ALL OR A PART OF SUCH COSTS. SHOULD THE MUNICIPALITY SELL SUCH PROPERTY, THE BOARD MAY REQUIRE THE PAYMENT TO THE STATE OF SUCH AMOUNT AS IT DEEMS FEASIBLE TO OFFSET THE COST OF REMEDIATION, THE VALUE OF THE PROPERTY AND THE ADDED VALUE OF THE POTENTIAL ECONOMIC DEVELOPMENT. NOTHING IN THIS ARTICLE SHALL RELIEVE A RESPONSIBLE PARTY THAT HAS NOT CONTRIBUTED TO THE COST OF REMEDIATION FROM AN ACTION BY THE RESPONSIBLE PARTY OR PARTIES THAT HAVE PAID FOR SUCH REMEDIATION FOR THE EQUITABLE SHARE SUCH PARTY SHOULD HAVE PAID AND SUCH PARTY SHALL NOT BE ACCORDED INDEMNIFICATION UNDER THIS ARTICLE OR THE INDEMNIFICATION AGREEMENT WITH THE DEVELOPERS THAT HAVE PAID FOR THE REMEDIATION OF SUCH PROPERTY.

S 410. LIABILITY LIMITATION AND INDEMNIFICATION. 1. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION AND IN PARAGRAPH (E) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED FIVE OF THIS ARTICLE, THE FOLLOWING SHALL NOT BE LIABLE TO THE STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, OR TO ANY PERSON UPON STATUTORY CAUSE OF ACTION ARISING OUT OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE IN OR ON PROPERTY AT ANY TIME BEFORE THE EFFECTIVE DATE OF A CONTRACT ENTERED INTO PURSUANT TO THIS ARTICLE:

(I) A DEVELOPER WHO HAS ENTERED INTO AN AGREEMENT WITH THE DIVISION TO UNDERTAKE AND HAS UNDERTAKEN AN ENVIRONMENTAL REMEDIATION PROJECT PURSUANT TO THIS ARTICLE AND HAS COMPLIED WITH THE TERMS AND CONDITIONS OF THE AGREEMENT PROVIDED THAT THE DEVELOPER DID NOT GENERATE, ARRANGE FOR, TRANSPORT FOR DISPOSAL OF ANY HAZARDOUS SUBSTANCE LOCATED AT SUCH PROPERTY AND DID NOT OWN SUCH PROPERTY DURING ANY SUCH TIME WHEN PROPERTY WAS CONTAMINATED; AND

(II) A SUCCESSOR IN TITLE TO THE REAL PROPERTY SUBJECT TO SUCH PROJECT; ANY LESSEE OF SUCH PROPERTY; AND ANY PERSON THAT PROVIDES FINANCING TO SUCH DEVELOPER RELATIVE TO THE REMEDIATION, RESTORATION, OR REDEVELOPMENT OF SUCH PROPERTY, PROVIDED THAT SUCH SUCCESSOR IN TITLE, LESSEE, OR LENDER DID NOT GENERATE, ARRANGE FOR, TRANSPORT, OR DISPOSE, AND DID NOT CAUSE THE GENERATION, ARRANGEMENT FOR, TRANSPORTATION, OR DISPOSAL OF ANY HAZARDOUS SUBSTANCE LOCATED AT SUCH PROPERTY, AND DID NOT OWN SUCH PROPERTY DURING ANY SUCH TIME WHEN PROPERTY WAS CONTAMINATED.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, ANY PERSON SEEKING THE BENEFIT OF THIS SUBDIVISION SHALL BEAR THE BURDEN OF PROVING THAT A CAUSE OF ACTION, OR ANY PART THEREOF, IS ATTRIBUTABLE SOLELY TO HAZARDOUS SUBSTANCES PRESENT IN OR ON SUCH PARCEL BEFORE THE EFFECTIVE DATE OF SUCH CONTRACT.

2. SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO RELIEVE ANY DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER FROM LIABILITY ARISING FROM:

(A) FAILING TO IMPLEMENT SUCH PROJECT TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH'S SATISFACTION OR FAILING TO COMPLY WITH THE TERMS AND CONDITIONS OF THE CONTRACT;

(B) FRAUDULENTLY DEMONSTRATING THE CLEANUP LEVELS IDENTIFIED IN OR TO BE IDENTIFIED IN ACCORDANCE WITH SUCH PROJECT WERE REACHED;

(C) CAUSING THE RELEASE OR THREAT OF RELEASE AT THE PROPERTY SUBJECT TO SUCH PROJECT OF ANY HAZARDOUS SUBSTANCE AFTER THE EFFECTIVE DATE OF SUCH CONTRACT; OR

(D) CHANGING SUCH PROPERTY'S USE FROM THE INTENDED USE AS IDENTIFIED IN THE CONTRACT PURSUANT TO THIS ARTICLE TO A USE REQUIRING A LOWER LEVEL OF RESIDUAL CONTAMINATION UNLESS THE ADDITIONAL REMEDIAL ACTIVITIES ARE UNDERTAKEN WHICH SHALL MEET THE SAME STANDARD FOR PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT THAT APPLIES TO REMEDIAL ACTIONS UNDERTAKEN PURSUANT TO THE INTENDED USE OF THE PROPERTY AS AGREED TO BY THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH SO THAT SUCH USE CAN BE IMPLEMENTED WITH SUFFICIENT PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT.

3. THE OFFICE OF INDEMNIFICATION SHALL INDEMNIFY AND SAVE HARMLESS, THE DEVELOPER, ANY SUCCESSOR IN TITLE, LESSEE, OR LENDER IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IN THE AMOUNT OF ANY JUDGMENT, OR SETTLEMENT, OBTAINED AGAINST SUCH DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER IN ANY COURT FOR ANY COMMON LAW CAUSE OF ACTION ARISING OUT OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE IN OR ON SUCH PROPERTY AND IS THE SUBJECT OF THE AGREEMENT BETWEEN THE DEVELOPER AND THE DIVISION AT ANYTIME BEFORE THE EFFECTIVE DATE OF A CONTRACT ENTERED INTO PURSUANT TO THIS ARTICLE. SUCH DEVELOPER, SUCCESSOR IN TITLE, LESSEE OR LENDER SHALL BE ENTITLED TO LEGAL REPRESENTATION TO BE PROVIDED BY, OR THE COST OF WHICH SHALL BE PAID FOR BY, THE OFFICE OF INDEMNIFICATION AS SUCH OFFICE SHALL DETERMINE PROVIDED SUCH DETERMINATION OF SUCH REPRESENTATION SHALL BE CONSISTENT WITH THE CODE OF PROFESSIONAL RESPONSIBILITY APPLICABLE TO LEGAL REPRESENTATION IN THIS STATE AND ANY SETTLEMENT OF SUCH AN ACTION SHALL BE SUBJECT TO THE APPROVAL OF THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AS TO FORM AND AMOUNT, AND THIS SUBDIVISION SHALL NOT APPLY TO ANY SETTLEMENT OF ANY SUCH ACTION WHICH HAS NOT RECEIVED SUCH APPROVAL.

4. THE DEVELOPER AND ANY SUCCESSOR IN TITLE SHALL IMPLEMENT AN ENVIRONMENTAL SAMPLING PROGRAM APPROVED BY THE DIVISION AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AND, IN THE EVENT THAT CONDITIONS ON SUCH PROPERTY ARE NOT SUFFICIENTLY PROTECTIVE OF HUMAN HEALTH FOR ITS CURRENT USE DUE TO ENVIRONMENTAL CONDITIONS RELATED TO THE PROPERTY SUBJECT TO SUCH PROJECT THAT WERE UNKNOWN TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH AS OF THE EFFECTIVE DATE OF SUCH CONTRACT OR DUE TO INFORMATION RECEIVED IN WHOLE OR IN PART AFTER THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH APPROVAL OF SUCH PROJECT FINAL ENGINEERING REPORT AND CERTIFICATION, SHALL TAKE SUCH EMERGENCY MEASURES THAT ARE NECESSARY TO MAINTAIN SUFFICIENT PROTECTION OF HUMAN HEALTH FOR SUCH PROPERTY'S CURRENT USE UNTIL SUCH CONDITIONS ARE ADDRESSED; AND THE OFFICE OF REMEDIATION SHALL TAKE SUCH MEASURES AS IT MAY DETERMINE THROUGH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND ITS STANDBY CONTRACTORS TO RETURN SUCH PROPERTY TO

CONDITIONS SUFFICIENTLY PROTECTIVE OF HUMAN HEALTH AND THE COST OF SUCH WORK SHALL BE PAID BY THE OFFICE OF INDEMNIFICATION.

5. IN ADDITION TO ANY OTHER POWERS THE DEPARTMENT MAY HAVE, THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH SHALL HAVE THE AUTHORITY TO PERIODICALLY INSPECT EACH PROJECT SITE TO ENSURE THAT THE USE OF THE PROPERTY COMPLIES WITH THE TERMS AND CONDITIONS OF THE CONTRACT.

S 411. CHANGE OF USE. 1. AT LEAST SIXTY DAYS BEFORE THE START OF PHYSICAL ALTERATION OR CONSTRUCTION CONSTITUTING A CHANGE OF SUCH AT A PROPERTY REMEDIATED UNDER AN ENVIRONMENTAL REMEDIATION AGREEMENT OR PROJECT, OR AT LEAST SIXTY DAYS BEFORE A CHANGE OF USE AT SUCH A PROPERTY NOT INVOLVING ANY PHYSICAL ALTERATION OR CONSTRUCTION, AS THE CASE MAY BE, THE PERSON PROPOSING TO MAKE A CHANGE OF USE SHALL PROVIDE WRITTEN NOTIFICATION TO THE DIVISION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF HEALTH AND THE CLERKS OF THE COUNTY AND OTHER MUNICIPALITIES IN WHICH SUCH PROPERTY IS LOCATED.

2. NO PERSON SHALL ENGAGE IN ANY ACTIVITY AT A PROPERTY REMEDIATED UNDER AN ENVIRONMENTAL REMEDIATION PROJECT THAT IS NOT CONSISTENT WITH RESTRICTIONS PLACED UPON THE USE OF THE PROPERTY, OR THAT WILL, OR THAT REASONABLY IS ANTICIPATED TO PREVENT OR INTERFERE SIGNIFICANTLY WITH A PROPOSED, ONGOING, OR COMPLETED PROJECT; OR EXPOSE THE PUBLIC HEALTH OR THE ENVIRONMENT TO A SIGNIFICANTLY INCREASED THREAT OF HARM DONE OR DAMAGE AT SUCH PROPERTY. IF THE DIVISION TOGETHER WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF HEALTH DETERMINE THAT A PROPOSED CHANGE OF USE IS PROHIBITED PURSUANT TO THIS SECTION, IT SHALL, WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE COMPLETE NOTICE REQUIRED BY THIS SECTION, PROVIDE THE PERSON GIVING SUCH NOTICE WITH A WRITTEN DETERMINATION THAT SUCH CHANGE OF USE WILL NOT BE AUTHORIZED, TOGETHER WITH THE REASONS FOR SUCH DETERMINATION.

3. FOR THE PURPOSES OF THIS SECTION:

(A) "CHANGE OF USE" MEANS THE TRANSFER OF TITLE TO ALL OR PART OF PROPERTY SUBJECT TO AN ENVIRONMENTAL REMEDIATION AGREEMENT WITH THE DIVISION, THE ERECTION OF ANY STRUCTURE ON SUCH PROPERTY, THE PAVING OF SUCH PROPERTY FOR USE AS A ROADWAY OR PARKING LOT, AND THE CREATION OF A PARK OR OTHER PUBLIC OR PRIVATE RECREATIONAL FACILITY ON SUCH PROPERTY, OR ANY ACTIVITY THAT IS LIKELY TO DISRUPT OR EXPOSE HAZARDOUS SUBSTANCES OR TO INCREASE DIRECT HUMAN EXPOSURE; OR ANY OTHER CONDUCT THAT WILL OR MAY TEND TO SIGNIFICANTLY INTERFERE WITH AN ONGOING OR COMPLETED ENVIRONMENTAL REMEDIATION PROJECT; AND

(B) "COMPLETE NOTICE" MEANS A NOTICE THAT ADEQUATELY APPRISES THE DIVISION AND THE EXECUTIVE BOARD OF THE CONTEMPLATED PHYSICAL ALTERATION OF THE PROPERTY AND HOW SUCH ALTERATION MAY AFFECT THE PROPERTY'S PROPOSED, ONGOING, OR COMPLETED REMEDIATION, OR OF THE PROPOSED NEW OWNER'S ABILITY TO IMPLEMENT THE ENGINEERING AND INSTITUTIONAL CONTROLS ASSOCIATED WITH THE PROPERTY'S REMEDIATION.

S 412. CONTINUATION OF THE STATE SUPERFUND MANAGEMENT BOARD. THE STATE SUPERFUND MANAGEMENT BOARD, CREATED PURSUANT TO SECTION 27-1319 OF THE ENVIRONMENTAL CONSERVATION LAW, SHALL BE CONTINUED AS THE ADVISORY BOARD TO THE DIVISION AND THE COMMISSIONER SHALL BE AN EX OFFICIO MEMBER OF SUCH BOARD WHEN IT MEETS TO ADVISE THE DIVISION.

S 413. COST OF DEMOLITION OF STRUCTURES ON VARIOUS SITES. IN THE EVENT THAT THE SURCHARGE RECEIPTS REFERRED TO IN SECTION FOUR HUNDRED EIGHT OF THIS ARTICLE SHALL EXCEED THE ACTUARIAL ESTIMATES OF FUTURE COSTS OF THE INDEMNIFICATION PROCESS, OR BECAUSE OF OTHER DEVELOPMENTAL OPPORTUNITIES, SUCH MONIES MAY BE AUTHORIZED BY THE DIVISION TO BE USED FOR DEMOLITION OF STRUCTURES ON THE SITES COVERED BY THIS ARTICLE, INCLUDING

ANY DEFINED AS BROWNFIELDS, EVEN THOUGH SUCH STRUCTURES MAY NOT IN AND OF THEMSELVES BE THE SOURCE OF CONTAMINATION OR BE REQUIRED TO BE REMOVED TO GET AT THE SOURCE OF SUCH CONTAMINATION.

S 414. INDEMNIFICATION FOR RESPONSIBLE DEVELOPER. NOTWITHSTANDING ANY CONTRARY OR INCONSISTENT PROVISION OF THIS ARTICLE, IF A DEVELOPER WHO WAS A RESPONSIBLE PARTY FOR THE CONTAMINATION OF ANY PROPERTY INCLUDING PROPERTY WHICH IT OWNS, ENTERS AN AGREEMENT WITH THE DIVISION TO UNDERTAKE A REMEDIATION PROJECT PURSUANT TO THIS ARTICLE AND PROVIDED THAT THE LEVEL OF REMEDIATION OF SUCH PROPERTY SHALL BE CONSISTENT WITH THAT REQUIRED BY SECTION 27-1313 OF THE ENVIRONMENTAL CONSERVATION LAW THE INDEMNIFICATION PORTION PROVIDED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE SHALL APPLY TO SUCH DEVELOPER AND ANY SUCCESSOR IN TITLE TO SUCH REMEDIATED PROPERTY IF SUCH DEVELOPER COMPLIES WITH SUCH SECTION IN ITS AGREEMENT WITH THE STATE AND REMEDIATES ITS CONTAMINATED PROPERTY PURSUANT TO SUCH AGREEMENT AND PAYS A SURCHARGE FOR SUCH INDEMNIFICATION PROVIDED IN THIS ARTICLE TO THE OFFICE OF INDEMNIFICATION AND SUCH PARTY SHALL BE SUBJECT TO ALL THE OTHER TERMS AND CONDITIONS OF THIS ARTICLE EXCEPT THE INDEMNIFICATION AND RELIEF OF LIABILITY PROVIDED BY THIS ARTICLE SHALL ONLY EXTEND TO THE PROPERTY THAT WAS THE SUBJECT OF THE REMEDIATION AGREEMENT BETWEEN THE STATE AS TO CLAIMS DESCRIBED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE AND SHALL NOT APPLY TO CLAIMS FOR NATURAL RESOURCE DAMAGES OR THIRD PARTY CLAIMS DESCRIBED IN SUBDIVISION THREE OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE, EXCEPT THAT LEGAL REPRESENTATION AS PROVIDED IN SUBDIVISION THREE OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE SHALL BE PROVIDED TO SUCH DEVELOPER FOR CLAIMS MADE AGAINST SUCH DEVELOPER AS DESCRIBED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED TEN OF THIS ARTICLE AS IT WOULD FOR ANY OTHER DEVELOPERS DESCRIBED IN SUCH SECTION.

S 415. MUNICIPALITY PARTICIPATION. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, A MUNICIPALITY AS DEFINED IN TITLE FIVE OF ARTICLE FIFTY-SIX OF THE ENVIRONMENTAL CONSERVATION LAW MAY UTILIZE THIS ARTICLE FOR ANY PROJECT AND STILL BE ENTITLED TO STATE AID FROM THE CLEAN WATER/CLEAN AIR BOND ACT OF 1996 ACCORDING TO SUCH TITLE.

S 2. The state finance law is amended by adding a new section 99-q to read as follows:

S 99-Q. ENVIRONMENTAL REMEDIATION INDEMNIFICATION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL REVENUE FUND TO BE KNOWN AS THE "ENVIRONMENTAL REMEDIATION INDEMNIFICATION FUND".

2. (A) SUCH FUND SHALL CONSIST OF, AND THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR DEPOSIT TO THE CREDIT OF SUCH FUND, MONIES COLLECTED PURSUANT TO SECTIONS FOUR HUNDRED FOUR AND FOUR HUNDRED EIGHT OF THE ECONOMIC DEVELOPMENT LAW INCLUDING, BUT NOT LIMITED TO, ALL SURCHARGES AND CLAIMS ADJUSTMENTS AND SETTLEMENTS RECEIVED FROM ONE OR MORE INDEMNIFICATION, INSURANCE, CASUALTY OR BONDING COMPANIES OR THE STATE INSURANCE FUND RELATING TO THE REQUIREMENTS OF SUCH ARTICLE AND ALL OTHER MONEYS CREDITED OR TRANSFERRED TO SUCH FUND FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW.

(B) THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO PERMIT INTEREST EARNINGS ON ANY FUND BALANCES TO ACCRUE TO THE BENEFIT OF SUCH FUND.

3. MONIES OF THE FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE, SHALL BE AVAILABLE TO THE DIVISION OF DEVELOPMENT ASSISTANCE, ENVIRONMENTAL INDEMNIFICATION AND LAND USE CONTROL IN THE DEPARTMENT OF ECONOM-

IC DEVELOPMENT AND SHALL BE EXPENDED EXCLUSIVELY FOR THE PURPOSES OF ARTICLE SEVENTEEN OF THE ECONOMIC DEVELOPMENT LAW.

4. MONIES SHALL BE PAID OUT OF SUCH FUND ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE COMMISSIONER OF ECONOMIC DEVELOPMENT.

S 3. Section 27-1319 of the environmental conservation law is REPEALED and a new section 27-1319 is added to read as follows:

S 27-1319. STATE SUPERFUND MANAGEMENT BOARD.

1. A. THERE IS HEREBY CREATED WITHIN THE DEPARTMENT THE "STATE SUPERFUND MANAGEMENT BOARD" HEREINAFTER REFERRED TO IN THIS SECTION AS THE BOARD. SUCH BOARD SHALL CONSIST OF FOURTEEN MEMBERS, INCLUDING THE COMMISSIONER AND THE COMMISSIONER OF HEALTH, OR THEIR DESIGNEES, AND TWELVE AT LARGE MEMBERS APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE AND TWO OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, ONE OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE AND ONE OF WHOM SHALL BE APPOINTED UPON RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY, AND, OF THE REMAINING SIX, TWO SHALL LIVE WITHIN A MUNICIPALITY WITHIN WHICH EXISTS AN INACTIVE HAZARDOUS WASTE SITE, OR SITES, AS LISTED PURSUANT TO SECTION 27-1305 OF THIS TITLE, AND HAVE BEEN INVOLVED IN A CITIZEN'S ORGANIZATION THAT HAS A PURPOSE RELATING TO THE SITE OR SITES WITHIN THAT MUNICIPALITY, TWO SHALL BE REPRESENTATIVES OF ORGANIZATIONS WHOSE PRIME FUNCTION IS THE PROTECTION OF NATURAL RESOURCES AND ENHANCEMENT OF THE ENVIRONMENTAL QUALITY OF THE STATE AND TWO SHALL BE REPRESENTATIVES OF INDUSTRIES THAT GENERATE HAZARDOUS WASTE IN THE STATE. NONE OF THE MEMBERS APPOINTED BY THE GOVERNOR SHALL BE OFFICERS OR EMPLOYEES OF ANY STATE DEPARTMENT OR AGENCY AND EACH SHALL BE, BY PROFESSIONAL TRAINING OR EXPERIENCE AND ATTAINMENT, QUALIFIED TO ANALYZE AND INTERPRET MATTERS PERTAINING TO HAZARDOUS WASTE MANAGEMENT AND THE REMEDIATION OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES.

B. NO AT LARGE MEMBER OF THE BOARD MAY APPOINT A DESIGNEE TO TEMPORARILY OR PERMANENTLY ASSUME HIS OR HER PLACE ON THE BOARD.

2. A. THE COMMISSIONER SHALL SERVE AS CHAIRPERSON OF THE BOARD AND THE BOARD SHALL ELECT A VICE CHAIRPERSON FROM AMONG THE APPOINTED MEMBERS TO PRESIDE IN THE ABSENCE OF THE CHAIRPERSON.

B. OF THE TWELVE AT LARGE MEMBERS APPOINTED BY THE GOVERNOR, EACH SHALL BE REAFFIRMED OR REAPPOINTED ON JANUARY THIRTY-FIRST, TWO THOUSAND TWELVE AND EVERY TWO YEARS THEREAFTER AND EACH SHALL HOLD OFFICE UNTIL SUCH TIME AS HE OR SHE SHALL RESIGN OR BE REMOVED IN THE MANNER PROVIDED BY LAW. ANY VACANCY ON THE BOARD SHALL BE FILLED BY APPOINTMENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION FOR THE UNEXPIRED BALANCE OF THE TERM.

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

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

A. SERVE AS A WORKING FORUM FOR THE EXCHANGE OF VIEWS, CONCERNS, IDEAS, INFORMATION AND RECOMMENDATIONS RELATING TO HAZARDOUS WASTE MANAGEMENT AND THE REMEDIATION OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES.

B. REQUEST AND RECEIVE FROM THE DEPARTMENT AT EACH MEETING OF THE BOARD ANY PORTIONS OF THE PLAN OR ANY REVISIONS, AMENDMENTS OR CHANGES AVAILABLE FOR REVIEW, AND ANY SUPPORTING DOCUMENTS OR OTHER PERTINENT DATA. ALL INFORMATION REQUESTED BY OR PROVIDED TO THE BOARD SHALL ALSO

BE PROVIDED TO THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRPERSONS OF THE SENATE AND ASSEMBLY ENVIRONMENTAL CONSERVATION COMMITTEES.

C. COMPEL THE ATTENDANCE AT EACH MEETING OF THE BOARD OF SUCH PERSONNEL OF THE DEPARTMENT, OR OF OTHER APPROPRIATE STATE DEPARTMENTS OR AGENCIES, AS MAY REASONABLY BE EXPECTED TO SUPPLY ANY PERTINENT DATA THE BOARD MAY REQUEST.

D. MONITOR AND REVIEW THE IMPLEMENTATION OF THE INACTIVE HAZARDOUS WASTE SITE REMEDIATION PROGRAM AND THE POLICIES, PROGRAM OBJECTIVES, METHODS, AND STRATEGIES OUTLINED IN THE PLAN, THE ANNUAL IMPLEMENTATION STATUS REPORT, ANY PLAN UPDATE, THE REGISTRY, AND THE QUARTERLY SITE STATUS REPORTS BY THE DEPARTMENT, AS WELL AS INFORMATION WHICH THE BOARD MAY ACQUIRE FROM OTHER SOURCES.

E. REVIEW THE HAZARDOUS WASTE SITE REMEDIATION REMAINING TO BE COMPLETED UNDER THE STATE INACTIVE HAZARDOUS WASTE REMEDIAL PLAN AS UPDATED, THE ESTIMATE OF THE COSTS WHICH WOULD BE INCURRED IN THE COMPLETION OF THIS REMEDIATION, THE SCHEDULE UNDER WHICH THE COSTS WILL BE INCURRED, THE REVENUES AND RESOURCES EXPECTED TO BE AVAILABLE TO MEET THESE COSTS.

F. REVIEW AND EVALUATE THE MUNICIPAL COST SHARING PROGRAM ESTABLISHED PURSUANT TO PARAGRAPH G OF SUBDIVISION FIVE OF SECTION 27-1313 OF THIS TITLE AND REVIEW THE APPROPRIATE STATE AND INDUSTRY CONTRIBUTION TO THE INACTIVE HAZARDOUS WASTE SITE REMEDIAL PROGRAM.

G. BASED UPON ITS MONITORING, REVIEWING AND OTHER INFORMATION AVAILABLE TO IT, THE BOARD SHALL REPORT TO THE GOVERNOR AND TO THE LEGISLATURE ON OR BEFORE JANUARY FIRST OF EACH YEAR ITS ASSESSMENT OF THE IMPLEMENTATION OF THE REMEDIATION PROGRAM, TOGETHER WITH ITS COMMENTS, SUGGESTIONS, AND RECOMMENDATIONS REGARDING THE PROGRAM, ITS IMPLEMENTATION, AVAILABLE FUNDING AND RESOURCES, AND THE NEED FOR STEPS TO ASSURE THE FUTURE AVAILABILITY OF FUNDING.

5. A. THE BOARD SHALL:

1. MEET AT LEAST QUARTERLY;

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

3. DETERMINE THE RULES OF ITS OWN PROCEDURES.

B. SEVEN MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD.

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

7. FOR THE PURPOSES OF THIS SECTION, THE AT LARGE MEMBERS OF THE BOARD SHALL BE CONSIDERED OFFICERS OR EMPLOYEES OF PUBLIC ENTITIES AND SHALL BE AFFORDED SUCH DEFENSE AND INDEMNIFICATION PROVIDED PURSUANT TO SECTION EIGHTEEN OF THE PUBLIC OFFICERS LAW.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision had not been included herein.

S 5. This act shall take effect immediately.