

4939--A

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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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; and providing for the repeal of such provisions upon expiration thereof

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2 REPEALED and a new section 27-1319 is added to read as follows: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

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

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1 SECTION 21 OF THE TAX LAW (AS ADDED BY SECTION 1 OF PART H OF CHAPTER 1
2 OF THE LAWS OF 2003) AND HAVE BEEN A MEMBER OF A COMMUNITY BASED ORGAN-
3 IZATION AS DEFINED IN SECTION 970-R OF THE GENERAL MUNICIPAL LAW, TWO
4 SHALL BE REPRESENTATIVES OF ORGANIZATIONS WHOSE PRIMARY FUNCTION IS THE
5 PROTECTION OF NATURAL RESOURCES AND ENHANCEMENT OF THE ENVIRONMENTAL
6 QUALITY OF THE STATE, AND TWO SHALL BE REPRESENTATIVES OF INDUSTRIES
7 THAT GENERATE HAZARDOUS WASTE IN THE STATE. NONE OF THE MEMBERS
8 APPOINTED BY THE GOVERNOR SHALL BE OFFICERS OR EMPLOYEES OF ANY STATE
9 DEPARTMENT OR AGENCY, AND EACH SHALL BE, BY PROFESSIONAL TRAINING OR
10 EXPERIENCE AND ATTAINMENT, QUALIFIED TO ANALYZE AND INTERPRET MATTERS
11 PERTAINING TO HAZARDOUS WASTE MANAGEMENT AND THE REMEDIATION OF INACTIVE
12 HAZARDOUS WASTE DISPOSAL AND BROWNFIELD SITES.

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

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

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

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

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

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

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

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

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

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

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

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

20 5. A. THE BOARD SHALL:

21 1. MEET AT LEAST QUARTERLY;

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

24 3. DETERMINE THE RULES OF ITS OWN PROCEDURES.

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

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

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

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

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

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

50 13. Upon the receipt of a certification provided pursuant to subdivi-
51 sion twelve of this section, the state [superfund management] REMEDIAL
52 PROGRAM OVERSIGHT board shall review and analyze the historical pattern
53 of revenue received by the industry fee transfer account and the long
54 term projection of future transfers from such account, and shall report
55 on or before December first of such year to the governor and the legis-
56 lature its recommendations, if any, as to the sources of additional

1 revenues which could be used to supplement the revenues to be received
2 by such fund in order to achieve the equal sharing of debt service costs
3 as implemented in subdivision nine of this section.
4 S 4. This act shall take effect immediately and shall expire and be
5 deemed repealed June 1, 2019.