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

841

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:

Section 1. Subdivision 2 of section 3-0301 of the environmental conservation law is amended by adding a new paragraph dd to read as follows:

DD. IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, PREPARE A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE IMPACT ON THE WATERS OF THE STATE AND THE IMPACT ON PUBLIC HEALTH FROM NUTRIENT LOADING AND OTHER CONTAMINANTS, INCLUDING PATHOGENS, CAUSED BY ON-SITE SEWAGE TREATMENT SYSTEMS, AND THE STEPS BEING TAKEN AND RECOMMENDATIONS FOR ADDITIONAL ACTIONS NECESSARY TO PROTECT THE WATERS AND PUBLIC HEALTH FROM SUCH IMPACTS. SUCH REPORT SHALL INCLUDE BUT NOT BE LIMITED TO MAPS OF AREAS SENSITIVE TO NUTRIENT LOADING THAT INCLUDE THE PERCENT AND ACREAGE OF WETLANDS AND OF AQUATIC SYSTEMS IN SUCH AREAS, AS WELL AS SOIL TYPES, THE PERCENT OF SLOPES AND ANY OTHER QUANTITATIVE OR DESCRIPTIVE INFORMATION THAT IS RELEVANT. SUCH REPORT SHALL INCLUDE A RANKING OF THE SIGNIFICANCE OF THE ENVIRONMENTAL AND PUBLIC HEALTH IMPACTS CAUSED BY ON-SITE WASTEWATER TREATMENT SYSTEMS IN RELATION TO OTHER KNOWN CONTAMINATION PROBLEMS. EXPERIENCES IN OTHER STATES AND COSTS AND BENEFITS SHALL BE EVALUATED IN MAKING RECOMMENDATIONS. SUCH REPORT SHALL BE COMPLETED BY THE DEPARTMENT AND SUBMITTED TO THE GOVERNOR AND THE STATE 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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S 2. The public health law is amended by adding a new article 12-A to read as follows:

ARTICLE 12-A
WATER QUALITY

SECTION 1250. DEFINITIONS.
1251. RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS.

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

1. "ALTERNATIVE SYSTEM" SHALL MEAN A WASTEWATER TREATMENT SYSTEM THAT INCLUDES COMPONENTS DIFFERENT FROM THOSE TYPICALLY USED IN A CONVENTIONAL SEPTIC TANK AND SUBSURFACE WASTEWATER INFILTRATION SYSTEM.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) RESIDENTIAL ON-SITE WASTEWATER TREATMENT SYSTEMS SHALL BE INSPECTED AND APPROVED BY A CERTIFIED INSPECTOR AT THE TIME OF INSTALLATION.

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

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

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

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

5. THE DEPARTMENT MAY DELEGATE THE ADMINISTRATIVE RESPONSIBILITIES INCLUDING THE RECEIPT AND FILING OF INSPECTION REPORTS TO ANY COUNTY THAT CAN ADEQUATELY DEMONSTRATE TO THE DEPARTMENT THAT IT HAS THE CAPACITY TO FULFILL SUCH RESPONSIBILITIES. THE DEPARTMENT SHALL AUDIT THE PROGRAM OF EACH COUNTY THAT HAS BEEN DELEGATED ADMINISTRATIVE RESPONSIBILITY EVERY FIVE YEARS.

6. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, SHALL PROMULGATE RULES AND REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

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

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

(C) PROVISIONS FOR PROVIDING HOMEOWNERS WITH NOTICE OF THE REQUIREMENTS OF THIS SECTION.

7. NOTWITHSTANDING TITLE NINETEEN OF ARTICLE SEVENTEEN OF THE ENVIRONMENTAL CONSERVATION LAW AND ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW, IN ADDITION TO THE ENTITIES IDENTIFIED IN THE DEFINITION OF "MUNICIPALITY" IN PARAGRAPH H OF SUBDIVISION ONE OF SECTION 17-1909 OF THE

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

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