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

7804

I N S E N A T E

June 10, 2014

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

AN ACT to establish the "Long Island water quality control act"; and to amend the environmental conservation law, in relation to the Long Island commission on aquifer protection

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

Section 1. This act shall be known and may be cited as the "Long Island water quality control act".

S 2. Legislative intent. Long Island's water resources are unique in the region, unusual in the nation, and of exceptional importance to the state of New York because of the economic, environmental and public health values that Long Island's water resources provide to the millions of people who live and recreate on Long Island.

Long Island has been designated as a federal sole source aquifer; nine special groundwater protection areas have been established across the region; and three estuary based watershed planning efforts have been created - in the Peconic Bay, the Long Island Sound, and the state-designated South Shore Estuary Reserve.

In spite of these designations and other planning efforts, Long Island's water resources have continued to be impacted by increasing quantities of nutrients, pathogens, pesticides, volatile organic contaminants and saltwater intrusion, as well as a number of emerging threats such as prescription drugs and sea level rise.

In response to these environmental impacts, the region has already experienced an increasing number of harmful algal blooms and other documented declines in key biological indicators which demonstrate continued and increasing stress on the region's groundwater resources and coastal ecosystems.

Continued water quality and coastal habitat decline, will result in more harmful algal blooms, shellfishing closures, beach closures, and fishing restrictions, along with the further contamination of private and public wells. These impacts will inevitably have significant nega-

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

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tive effects on the tourism economy of Long Island--and on the quality of life and public health for the millions of residents of the region.

S 3. Article 15 of the environmental conservation law is amended by adding a new title 35 to read as follows:

TITLE 35

LONG ISLAND WATER QUALITY CONTROL ACT

SECTION 15-3501. DECENTRALIZED WASTEWATER MANAGEMENT AUTHORIZATION.
15-3503. LONG ISLAND GROUNDWATER MANAGEMENT GOAL.
15-3505. DENITRIFICATION SYSTEM REQUIREMENTS.
15-3507. INCREASED HAZARDOUS AND INDUSTRIAL WASTE COLLECTION DAYS.
15-3509. STATE OF THE AQUIFER REPORT.
15-3511. AUTOMATIC SPRINKLER REQUIREMENTS.
15-3513. LONG ISLAND PESTICIDE EVALUATION REPORT.
15-3515. LONG ISLAND WATER QUALITY CRITERIA.
15-3517. MANAGEMENT OF FERTILIZER AND PESTICIDES TO ENSURE LONG ISLAND WATER QUALITY.
15-3519. DECENTRALIZED WASTEWATER SYSTEM PILOT PROGRAM.
15-3521. RESTRICTIONS ON CESSPOOL REPAIRS.

S 15-3501. DECENTRALIZED WASTEWATER MANAGEMENT AUTHORIZATION.

NOTHING CONTAINED IN TITLE TWELVE OF ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW SHALL BE CONSTRUED TO PROHIBIT THE CONSTRUCTION OF DECENTRALIZED WASTEWATER MANAGEMENT SYSTEMS ON LONG ISLAND. THE ENVIRONMENTAL FACILITIES CORPORATION SHALL FACILITATE THE DEVELOPMENT OF DECENTRALIZED WASTEWATER MANAGEMENT SYSTEMS INCLUDING, BUT NOT LIMITED TO, THE PREPARATION OF PLANNING GUIDANCE FOR DECENTRALIZED WASTEWATER MANAGEMENT SYSTEMS.

S 15-3503. LONG ISLAND GROUNDWATER MANAGEMENT GOAL.

THE DEPARTMENT SHALL REGULATE ALL GROUNDWATER AND SURFACE WATER IN NASSAU AND SUFFOLK COUNTIES FOR LONG-TERM SUSTAINABILITY TO ENSURE ITS BEST USAGE AS DRINKING WATER SUPPLY AND TO PROTECT AND RESTORE THE ECOLOGICAL INTEGRITY OF LONG ISLAND'S SURFACE WATERS.

S 15-3505. DENITRIFICATION SYSTEM REQUIREMENTS.

ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, ALL NEW CONSTRUCTION AND SUBSTANTIAL RECONSTRUCTION IN ANY PRIORITY NITROGEN-REDUCTION AREAS DESIGNATED BY THE COUNTY, SHALL UTILIZE DENITRIFICATION SYSTEMS, FROM A LIST OF APPROVED SYSTEMS DEVELOPED BY SUFFOLK AND NASSAU COUNTIES, IN CONSULTATION WITH THE DEPARTMENT.

S 15-3507. INCREASED HAZARDOUS AND INDUSTRIAL WASTE COLLECTION DAYS.

IN ASSESSING ANY ENVIRONMENTAL BENEFIT PROJECTS IN NASSAU AND SUFFOLK COUNTIES RESULTING FROM VIOLATIONS OF THIS ARTICLE AND ARTICLES SEVENTEEN, TWENTY-THREE, TWENTY-FOUR, AND THIRTY-THREE OF THIS CHAPTER, THE DEPARTMENT SHALL GIVE PRIORITY TO THE FUNDING OF HAZARDOUS WASTE AND INDUSTRY COLLECTION DAYS. ANY SUCH PROJECTS SHALL ENHANCE, AND NOT DIMINISH, EXISTING COLLECTION EVENTS.

S 15-3509. STATE OF THE AQUIFER REPORT.

THE "LONG ISLAND COMMISSION ON AQUIFER PROTECTION" SHALL MEAN THE ENTITY JOINTLY CREATED BY NASSAU AND SUFFOLK COUNTIES, PURSUANT TO NASSAU COUNTY RESOLUTION NUMBER 107-2013 AND SUFFOLK COUNTY RESOLUTION NUMBER 85-2013, TO ADDRESS WATER QUALITY ISSUES, INCLUDING GROUNDWATER QUALITY, ON A BROAD GEOGRAPHIC SCALE.

THE LONG ISLAND COMMISSION ON AQUIFER PROTECTION SHALL PREPARE A "STATE OF THE AQUIFER" REPORT WITHIN ONE YEAR AND UPDATE SUCH REPORT ANNUALLY; PROVIDED, HOWEVER, THAT SHOULD SUCH COMMISSION CEASE TO EXIST, THE DEPARTMENT SHALL PERFORM SUCH FUNCTION.

S 15-3511. AUTOMATIC SPRINKLER REQUIREMENTS.

ANY AUTOMATIC SPRINKLER SYSTEM INSTALLED IN NASSAU AND SUFFOLK COUNTY ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN SHALL BE EQUIPPED WITH A RAIN SENSOR DEVICE OR SWITCH THAT WILL AUTOMATICALLY OVERRIDE THE IRRIGATION CYCLE OF SUCH SPRINKLER WHEN ADEQUATE RAINFALL HAS OCCURRED.

S 15-3513. LONG ISLAND PESTICIDE EVALUATION REPORT.

IN ADDITION TO THE DEVELOPMENT OF THE WATER RESOURCES MANAGEMENT STRATEGY REQUIRED PURSUANT TO SECTION 15-2907 OF THIS ARTICLE, THE DEPARTMENT, IN CONSULTATION WITH THE REGIONAL PLANNING BOARD ESTABLISHED PURSUANT TO SECTION 15-1105 OF THIS ARTICLE, NASSAU AND SUFFOLK COUNTY DEPARTMENTS OF HEALTH, THE LONG ISLAND COMMISSION ON AQUIFER PROTECTION AND INTERESTED STAKEHOLDERS (INCLUDING BUT NOT LIMITED TO PLANNING, ENVIRONMENTAL, CIVIC, AGRICULTURE OR INDUSTRY GROUPS) SHALL, NOT LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, AND EVERY TWO YEARS THEREAFTER, PREPARE A COMPREHENSIVE LONG ISLAND PESTICIDE EVALUATION REPORT. SUCH REPORT SHALL INCLUDE AN EVALUATION OF THE EXTENT OF PESTICIDE-RELATED CONTAMINATION, WITH AN ACTION PLAN AND EXPECTED PLAN ADOPTION DATE, WHICH SHALL NOT BE LATER THAN TWENTY-FOUR MONTHS AFTER THE PUBLICATION OF THE REPORT. THE ACTION PLAN SHALL PRIORITIZE THE EVALUATION OF THOSE REGISTERED PESTICIDES THAT APPEAR IN CLUSTERED DETECTIONS IN LONG ISLAND GROUNDWATER AS RECOGNIZED IN THE SUFFOLK COUNTY DEPARTMENT OF HEALTH WATER QUALITY MONITORING CONDUCTED BETWEEN TWO THOUSAND ONE AND TWO THOUSAND TEN, AND MAKE SPECIFIC RECOMMENDATIONS TO PREVENT AND/OR REMEDIATE FUTURE PESTICIDE CONTAMINATION. PRIOR TO FINALIZING SUCH REPORT, AND FOLLOWING ADEQUATE PUBLIC NOTICE, THE DEPARTMENT SHALL HOLD NOT LESS THAN TWO HEARINGS ON LONG ISLAND AND SHALL ADOPT A PUBLIC COMMENT PERIOD OF NO LESS THAN SIXTY DAYS.

S 15-3515. LONG ISLAND WATER QUALITY CRITERIA.

AS PROMPTLY AS POSSIBLE, BUT NO LATER THAN TWENTY-FOUR MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, AND FOLLOWING NOT LESS THAN TWO PUBLIC HEARINGS, THE DEPARTMENT, IN CONSULTATION WITH COUNTY HEALTH DEPARTMENTS AND THE LONG ISLAND COMMISSION ON AQUIFER PROTECTION, SHALL PROMULGATE RULES AND REGULATIONS ESTABLISHING BOTH NARRATIVE AND NUMERIC WATER QUALITY CRITERIA FOR LONG ISLAND'S GROUND AND SURFACE WATERS ON A WATERSHED BASIS, TO PROTECT AND RESTORE THE PHYSICAL, BIOLOGICAL AND CHEMICAL INTEGRITY OF LONG ISLAND'S WATERS. SUCH CRITERIA SHALL GIVE PRIORITY TO LIMITING NUTRIENTS, PARTICULARLY NITROGEN. IN ESTABLISHING SUCH CRITERIA, CONSIDERATION SHALL BE GIVEN TO NUTRIENT LOADING, FATE AND EFFECT ASSESSMENTS FOR LIMITING NUTRIENTS, BIOLOGICAL PRODUCTIVITY, BIOLOGICAL INDICATORS INCLUDING THE PRESENCE OF HARMFUL ALGAL BLOOMS, AND TOTAL WATERSHED LOADING. THE RESULTING CRITERIA SHOULD BE A FACTOR IN DETERMINING WHAT WATER BODIES ARE LISTED ON THE IMPAIRED WATER BODIES LIST PURSUANT TO SECTION 303(D) OF THE FEDERAL CLEAN WATER ACT.

S 15-3517. MANAGEMENT OF FERTILIZER AND PESTICIDES TO ENSURE LONG ISLAND WATER QUALITY.

THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS, THE NASSAU AND SUFFOLK COUNTIES SOIL AND WATER DISTRICTS AND CORNELL COLLEGE OF AGRICULTURE AND LIFE SCIENCES, SHALL PREPARE GUIDANCE DOCUMENTS FOR FARMERS IN NASSAU AND SUFFOLK COUNTIES FOR NUTRIENT REDUCTION AND OUTLINING RECOMMENDED FERTILIZER AND PESTICIDES APPLICATION RATES FOR CROPS TO ENSURE CONSIDERATION OF GROUNDWATER MANAGEMENT PRINCIPLES INCLUDING RECOMMENDATIONS ON THE TIMING AND MANNER OF APPLICATION. IN ADDITION, THE DEPARTMENT OF AGRICULTURE AND MARKETS SHALL INCLUDE CONSIDERATION OF LONG ISLAND GROUNDWATER MANAGEMENT IN ITS EXERCISE OF AUTHORITY PURSUANT TO ARTICLE TEN OF THE AGRICULTURE AND MARKETS LAW AND THE DEPARTMENT SHALL INCLUDE CONSIDERATION OF LONG ISLAND

GROUNDWATER MANAGEMENT IN ITS EXERCISE OF AUTHORITY PURSUANT TO ARTICLE THIRTY-THREE OF THIS CHAPTER.

S 15-3519. DECENTRALIZED WASTEWATER SYSTEM PILOT PROGRAM.

AS PROMPTLY AS POSSIBLE, BUT NO LATER THAN TWENTY-FOUR MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE ENVIRONMENTAL FACILITIES CORPORATION SHALL CONDUCT A PILOT PROGRAM TO FINANCE SMALL SCALE COMMUNITY WASTEWATER SYSTEMS, IN AREAS IDENTIFIED AS PRIORITY SEWERING AREAS BY THE DEPARTMENT, BASED UPON RECOMMENDATIONS FROM THE NASSAU AND SUFFOLK COUNTIES HEALTH DEPARTMENTS AND THE LONG ISLAND COMMISSION ON AQUIFER PROTECTION.

S 15-3521. RESTRICTIONS ON CESSPOOL REPAIRS.

AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, CESSPOOLS IN AREAS DESIGNATED AS A PRIORITY SEWERING AREA SHALL NOT BE REPAIRED UNLESS THE REPAIR IS MINOR IN NATURE. IN LIEU OF REPAIRS, A SYSTEM THAT COMPLIES WITH CURRENT SANITARY CODE MUST BE INSTALLED. IF A CONFORMING SYSTEM CANNOT BE INSTALLED ON THE PROPERTY, THE COUNTY HEALTH DEPARTMENT HAS DISCRETION TO APPROVE A NONCONFORMING SYSTEM, PROVIDED THE SYSTEM DESIGN IS PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT.

S 4. The department of environmental conservation shall have authority to enter into agreements to delegate authority provided pursuant to this act to county departments of health provided that such delegation shall not in anyway obviate any of the department's responsibilities pursuant to this act.

S 5. The section heading and subdivisions 1 and 8 of section 15-1103 of the environmental conservation law are amended to read as follows:

Petition; proceedings[; exclusion of certain counties].

1. Any county, city, town or village, when duly authorized to do so, or any combination thereof, [except as provided in subdivision 7 hereof,] may submit to the department a verified petition requesting the department to consider a proposal for a survey and study of the water resources of a specified region of which the petitioning municipality is a part, for the purpose of preparing and providing a comprehensive plan or plans for the protection, conservation, development and beneficial use of such resources. Any such petition, prior to its submission to the department, must be approved by the county legislative body of each county wholly or partly within the specified region. The petition shall set forth the facts upon which the petitioner or petitioners rely to show that it is necessary and would be in the public interest and benefit to undertake such survey, study and comprehensive planning. The petition shall list the persons, public corporations and state agencies engaged in receiving, collecting, storing, transmitting, distributing, processing or otherwise dealing with water for a public purpose, within the region set forth in the petition, and the names and addresses of the clerks or other executive officers thereof. There shall be attached to the petition a certified copy of the resolution, ordinance or other evidence of authority authorizing the execution of the petition. IN THE CASE OF NASSAU AND SUFFOLK COUNTIES, THE DEPARTMENT IS HEREBY DIRECTED TO PERFORM SUCH STUDY.

8. The area of the state within the corporate limits of the city of New York shall not be included, in whole or in part, in any region proposed by a petition[, or as enlarged or as determined by the department under this section, which region includes in whole or in part the counties of Nassau or Suffolk, or either of them].

S 6. Subdivisions 1, 2, 9 and 10 of section 15-1105 of the environmental conservation law are amended to read as follows:

1. If the department shall determine that the proposal should be undertaken, the department, after the expiration of the time in which a review of its decision may be had or, in the event such a review has been instituted, after a final judgment or order affirming the department's decision has been entered therein, shall appoint a regional planning board, hereinafter referred to as "the board." IN THE CASE OF NASSAU AND SUFFOLK COUNTIES, THE DEPARTMENT SHALL APPOINT A REGIONAL PLANNING BOARD WITHIN SIX MONTHS OF ITS COMPLETION OF THE REQUIREMENTS OF SECTION 15-3515 OF THIS ARTICLE.

2. The board shall consist of [seven] NINE members residing in the region of the proposal and of whom:

a. At least [one member] TWO MEMBERS shall be representative of the municipal corporations within the region of the proposal; and service as a member of the board shall not be deemed as service rendered to any municipal corporation;

b. At least one member shall be representative of the agricultural and farming interests within the region of the proposal and shall be actively interested in the improvement and development of agricultural and farming process and techniques;

c. At least one member shall be representative of industry within the region of the proposal and actively engaged or employed in an industrial or commercial pursuit INCLUDING AN INDUSTRY TRADE GROUP OR ASSOCIATION;

d. At least one member shall be representative of groups within the region of the proposal interested in the needs of fisheries and waterfowl and in forms of outdoor recreation made possible by the state's waters; [and]

e. At least one member shall be actively engaged in or connected with the acquisition, operation or management of public water supplies within the region; and service as a member of the board shall not be deemed as service rendered to any municipal corporation[.]; AND

F. AT LEAST ONE MEMBER SHALL BE REPRESENTATIVE OF A NON-PROFIT ENVIRONMENTAL ORGANIZATION.

9. Special meetings may be called by the chairman upon his OR HER own initiative and must be called [by him] upon receipt of a written request therefor signed by at least two members of the board. Written notice of the time and place of such special meeting shall be given by the secretary to each member at least four days before the date fixed by the notice for such special meeting.

10. [Four] FIVE members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings, EXCEPT THAT PLANS APPROVED PURSUANT TO SUBDIVISION SIXTEEN OF THIS SECTION SHALL REQUIRE A MAJORITY VOTE OF THE BOARD.

S 7. Paragraph b of subdivision 1 of section 15-1504 of the environmental conservation law, as added by chapter 401 of the laws of 2011, is amended to read as follows:

b. [All] NOTWITHSTANDING SUBPARAGRAPH TWO OF PARAGRAPH B OF SUBDIVISION FOUR OF THIS SECTION, ALL persons making a withdrawal of water for agricultural purposes shall annually register or report the withdrawal to the department under the provisions of this section by March thirty-first of each year.

S 8. Section 15-1527 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. THE DEPARTMENT SHALL REQUIRE ALL PERMITS TO INCLUDE NINETY DAYS PRIOR NOTICE TO THE DEPARTMENT PRIOR TO THE SEALING OF ANY WELL OR EXTRACTION OF ANY WELL CASING. UPON RECEIPT OF SUCH NOTICE THE DEPARTMENT SHALL NOTIFY THE UNITED STATES GEOLOGICAL SURVEY WATER PURVEYORS

AND THE APPROPRIATE COUNTY HEALTH DEPARTMENT IN THE EVENT THAT SUCH ENTITIES MAY BE INTERESTED IN ACQUIRING SUCH WELL FOR TESTING PURPOSES.

S 9. Section 15-2907 of the environmental conservation law, as amended by chapter 214 of the laws of 1991, is amended to read as follows:

S 15-2907. Water resources management strategy; development purpose.

1. Not later than January first, nineteen hundred eighty-seven, the department [of environmental conservation], with the participation of the department of health and whenever possible, regional planning and development boards, shall develop and submit a complete statewide water resources management strategy to the water resources planning council for its review and adoption. This strategy shall be composed of substate water resources management strategies which recognize the natural boundaries of the water resource basins, watersheds, and aquifers and existing significant deficiencies of water supply, and which organize these in the most practical and manageable manner. Each substate management strategy shall analyze the present and future demographic, natural resource, economic development, water quality, and conservation requirements of public and private water systems and develop regional management strategies to meet the water resources requirements of residential, agricultural, industrial and commercial users as well as assure the highest possible quality and quantity of these resources.

Strategies shall analyze the efficiency and capacity of existing water supply sources and facilities and shall contain recommendations for appropriate modifications, restoration, and expansion or development of new sources or facilities. Such strategies shall also include evaluations and recommendations as to the feasibility of including hydroelectric energy generation facilities as part of the modifications, restoration, and expansion or development of new or existing resources or facilities. The strategy shall also contain recommendations regarding implementation of these strategies by the department of health, the department [of environmental conservation], other appropriate state agencies, local governments and special districts. In addition, the departments shall submit to the council substate water resources management strategies as soon as such strategies are developed. The departments shall also report regularly to the council on the development of the strategies and receive the council's recommendations and directions. Such substate strategies shall also be available for public inspection as soon as such strategies are developed.

2. NOT LATER THAN JANUARY FIRST, TWO THOUSAND SEVENTEEN, THE DEPARTMENT, WITH THE PARTICIPATION OF THE DEPARTMENT OF HEALTH AND WHENEVER POSSIBLE, REGIONAL PLANNING AND DEVELOPMENT BOARDS, SHALL DEVELOP AND SUBMIT A COMPLETE LONG ISLAND WATER RESOURCES MANAGEMENT STRATEGY TO THE WATER RESOURCES PLANNING COUNCIL FOR ITS REVIEW AND ADOPTION. THIS STRATEGY SHALL BE COMPOSED OF WATER RESOURCES MANAGEMENT STRATEGIES WHICH RECOGNIZE THE NATURAL BOUNDARIES OF THE WATER RESOURCE BASINS, WATERSHEDS, AND AQUIFERS AND EXISTING SIGNIFICANT DEFICIENCIES OF WATER SUPPLY, AND WHICH ORGANIZE THESE IN THE MOST PRACTICAL AND MANAGEABLE MANNER. EACH MANAGEMENT STRATEGY SHALL ANALYZE THE PRESENT AND FUTURE DEMOGRAPHIC, NATURAL RESOURCE, ECONOMIC DEVELOPMENT, WATER QUALITY, AND CONSERVATION REQUIREMENTS OF PUBLIC AND PRIVATE WATER SYSTEMS AND DEVELOP MANAGEMENT STRATEGIES TO MEET THE WATER RESOURCES REQUIREMENTS OF RESIDENTIAL, AGRICULTURAL, INDUSTRIAL AND COMMERCIAL USERS AS WELL AS ASSURE THE HIGHEST POSSIBLE QUALITY AND QUANTITY OF THESE RESOURCES.

STRATEGIES SHALL ANALYZE THE EFFICIENCY AND CAPACITY OF EXISTING WATER SUPPLY SOURCES AND FACILITIES AND SHALL CONTAIN RECOMMENDATIONS FOR APPROPRIATE MODIFICATIONS, RESTORATION, AND EXPANSION OR DEVELOPMENT OF

NEW SOURCES OR FACILITIES. SUCH STRATEGIES SHALL ALSO INCLUDE EVALUATIONS AND RECOMMENDATIONS. THE STRATEGY SHALL ALSO CONTAIN RECOMMENDATIONS REGARDING IMPLEMENTATION OF THESE STRATEGIES BY THE DEPARTMENT OF HEALTH, THE DEPARTMENT, OTHER APPROPRIATE STATE AGENCIES, LOCAL GOVERNMENTS AND SPECIAL DISTRICTS. IN ADDITION, THE DEPARTMENTS SHALL SUBMIT TO THE COUNCIL WATER RESOURCES MANAGEMENT STRATEGIES AS SOON AS SUCH STRATEGIES ARE DEVELOPED. THE DEPARTMENTS SHALL ALSO REPORT REGULARLY TO THE COUNCIL ON THE DEVELOPMENT OF THE STRATEGIES AND RECEIVE THE COUNCIL'S RECOMMENDATIONS AND DIRECTIONS. SUCH STRATEGIES SHALL ALSO BE AVAILABLE FOR PUBLIC INSPECTION AS SOON AS SUCH STRATEGIES ARE DEVELOPED.

S 10. This act shall take effect on the ninetieth day after it shall have become a law.