

STATE OF NEW YORK

6842

2017-2018 Regular Sessions

IN ASSEMBLY

March 22, 2017

Introduced by M. of A. LIFTON, COLTON, ROSENTHAL, GALEF, ABINANTI, TITONE -- Multi-Sponsored by -- M. of A. GUNTHER -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to liens against expenditures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The environmental conservation law is amended by adding a
2 new section 27-1325 to read as follows:

3 § 27-1325. Liens against expenditures.

4 1. Environmental lien. (a) The state of New York shall be entitled to
5 a lien upon all real property of any person from whom the state may
6 recover costs under section ninety-seven-b of the state finance law or
7 any provision of this chapter for any or all expenditures made by the
8 state in accordance with this title or section ninety-seven-b of the
9 state finance law. This lien shall constitute a continuing regulatory
10 obligation imposed by the state in support of its governmental interest
11 in public health and safety and in the enforcement of the provisions of
12 this chapter.

13 (b) An environmental lien shall attach when:

14 (1) expenditures are made by the state in accordance with this title
15 or section ninety-seven-b of the state finance law;

16 (2) the person or persons referred to in paragraph (a) of this subdi-
17 vision fails to pay such costs within ninety days after a written demand
18 therefor by the department is mailed by certified or registered mail,
19 return receipt requested; and

20 (3) a notice of environmental lien is filed as provided in subdivision
21 two of this section; provided, however, that a copy of the notice of
22 environmental lien is served upon the owner of the real property subject
23 to the environmental lien within thirty days of such filing in accord-
24 ance with the provisions of section eleven of the lien law.

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

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1 (c) An environmental lien shall continue against the real property
2 until:

3 (1) the expenditures made by the state in accordance with this title
4 or section ninety-seven-b of the state finance law are recovered or
5 become unrecoverable;

6 (2) the lien is released by the commissioner pursuant to this subdivi-
7 sion;

8 (3) the lien is discharged by payment of moneys into court; or

9 (4) the lien is otherwise vacated by court order.

10 (d) Upon the occurrence of any of the subparagraphs of paragraph (c)
11 of this subdivision, except where the lien is vacated by court order,
12 the commissioner shall execute the release of an environmental lien and
13 file the release as provided in subdivision three of this section. The
14 commissioner may release an environmental lien where:

15 (1) a legally enforceable agreement satisfactory to the commissioner
16 has been executed relating to remediation of the site and damage costs
17 or reimbursing the fund for expenditures made by the state in accordance
18 with this title or section ninety-seven-b of the state finance law; or

19 (2) the attachment or enforcement of the environmental lien is deter-
20 mined by the commissioner not to be in the public interest.

21 (e) An environmental lien is subject to the rights of any other
22 person, including an owner, purchaser, holder of a mortgage or security
23 interest, or judgment lien creditor, whose interest is perfected before
24 a lien notice has been filed as provided in subdivision three of this
25 section.

26 2. Environmental lien notice; contents. A notice of environmental lien
27 must state:

28 (a) that the lienor is the state of New York;

29 (b) the name of the record owner of the real property on which the
30 environmental lien has attached;

31 (c) the real property subject to the lien, with a description thereof
32 sufficient for identification;

33 (d) that the real property described in the notice is property of a
34 person from whom the state may recover costs under section ninety-sev-
35 en-b of the state finance law or any provision of this chapter for any
36 or all expenditures made by the state in accordance with this title or
37 section ninety-seven-b of the state finance law;

38 (e) that the owner is potentially responsible for such costs as
39 described in paragraph (d) of this subdivision; and

40 (f) that an environmental lien has attached to the described real
41 property.

42 3. Filing of notice of environmental lien; filing of release. (a) A
43 notice of environmental lien shall be filed within six years from the
44 time expenditures are made by the state in accordance with this title or
45 section ninety-seven-b of the state finance law in the clerk's office of
46 the county where the property is situated. If such property is situated
47 in two or more counties, the notice of environmental lien shall be filed
48 in the office of the clerk of each of such counties. The notice of lien
49 shall be indexed by the county clerk in accordance with the provisions
50 of section ten of the lien law.

51 (b) A release of an environmental lien shall be filed in the clerk's
52 office of each county where the notice of environmental lien was filed
53 and shall be indexed in the manner prescribed for indexing environmental
54 liens.

55 4. Enforcement of environmental lien. An environmental lien may be
56 enforced against the property specified in the notice of environmental

1 lien, and an environmental lien may be vacated or discharged, as
2 prescribed in article three of the lien law; provided, however, that
3 nothing in this article or in article three of the lien law shall affect
4 the right of the state to bring an action to recover costs as provided
5 for in section ninety-seven-b of the state finance law or this chapter.

6 5. Amounts received to satisfy lien. Amounts received by the commis-
7 sioner to satisfy all or part of an environmental lien shall be deposit-
8 ed in the state treasury and credited to the hazardous waste remedial
9 fund established in section ninety-seven-b of the state finance law.

10 § 2. This act shall take effect immediately.