STATE OF NEW YORK

8013--A

2017-2018 Regular Sessions

IN ASSEMBLY

May 25, 2017

Introduced by M. of A. MORELLE, JONES, McDONALD -- Multi-Sponsored by -- M. of A. BARCLAY, BRONSON, HAWLEY, JENNE, JOHNS, LAWRENCE, MORINELLO, NORRIS, OAKS -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to create the Lake Ontario-St. Lawrence Seaway flood recovery and International Joint Commission Plan 2014 mitigation grant program (Part A); providing for real property tax refunds and credits for participation in the Lake Ontario and connected waterways assessment relief act; and to amend the local finance law in relation to the financing of such refunds and credits (Part B); and to amend the tax law, in relation to exempting certain distributions from eligible retirement plans for income tax purposes (Part C)

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

Section 1. This act enacts into law major components of legislation relating to creating the Lake Ontario - St. Lawrence Seaway flood recovery and International Joint Commission Plan 2014 mitigation grant program and establishing real property tax refunds and credits for participation in the Lake Ontario and connected waterways assessment relief act. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

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

LBD11864-03-7

Section 1. There is hereby created the Lake Ontario-St. Lawrence Seaway flood recovery and International Joint Commission Plan 2014 mitigation grant program.

1. When used in this act, the term "covered waterway" shall mean Lake Ontario, the St. Lawrence river, Seneca lake, the Seneca river, the Oswego river, the Oneida river, Oneida lake and Cross lake.

2. (a) Small businesses, farms, owners of multiple dwellings, homeowners associations, and not-for-profit organizations that sustained direct physical flood-related damage as a result of flooding caused by the raised level of any covered waterway, that occurred between January 1, 2017 and June 30, 2017, shall be eligible to apply for a grant under this subdivision.

(b) Such grant shall be in an amount of no more than $30,000 for owners of multiple dwellings and no more than $100,000 for small businesses, farms, homeowners associations and not-for-profit corporations, and shall be used for storm-related repairs and restoration to structures, equipment, and for other storm-related costs, all of which were not covered by any other federal, state or local recovery program or any third-party payors.

(c) The empire state development corporation shall administer this grant program, which shall not exceed in the aggregate $25,000,000. Such corporation is hereby empowered to establish grant guidelines and additional eligibility criteria, based on available flood damage data provided by applicable state and/or federal agencies, as it deems necessary to effectuate the administration of this program. In providing assistance pursuant to this subdivision, the empire state development corporation shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies.

3. (a) Owners of residences that sustained direct physical flood-related damage as a result of flooding caused by the raised level of any covered waterway, that occurred between January 1, 2017 and June 30, 2017, shall be eligible to apply for a grant under this subdivision.

(b) Such grant shall be in an amount of no more than $60,000 and shall be used for storm-related repairs and restoration to structures, equipment, and for other storm-related costs, all of which were not covered by any other federal, state or local recovery program or any third-party payors.

(c) The empire state development corporation shall administer this grant program, which shall not exceed in the aggregate $15,000,000. Such corporation is hereby empowered to establish grant guidelines and additional eligibility criteria, based on available flood damage data provided by applicable state and/or federal agencies, as it deems necessary to effectuate the administration of this program. In providing assistance pursuant to this subdivision, the empire state development corporation shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies.

4. (a) Counties, cities, towns, villages and special districts that sustained direct physical flood-related damage as a result of flooding caused by the raised level of any covered waterway, that occurred between January 1, 2017 and June 30, 2017, are eligible to apply for a grant under this subdivision.

(b) Such grant shall be in an amount of no more than $1,000,000 and shall be used for storm-related repairs and restoration to municipal infrastructure and systems, including, but not limited to, roads, bridg-

es and other transportation systems, drinking water systems, sanitary and/or storm sewer systems, levee and/or flood protection systems, as well as for municipal equipment, and for other storm-related costs, all of which were not covered by any other federal, state or local recovery program or any third-party payors.

(c) The empire state development corporation shall administer this grant program, which shall not exceed in the aggregate $25,000,000. Such corporation is hereby empowered to establish grant guidelines and additional eligibility criteria, based on available flood damage data provided by applicable state and/or federal agencies, as it deems necessary to effectuate the administration of this program. In providing assistance pursuant to this subdivision, the empire state development corporation shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies.

5. (a) The empire state development corporation, in consultation with the department of environmental conservation and the environmental facilities corporation, shall administer a grant program for counties for flood mitigation or flood control projects in lakes, rivers, creeks, streams, and brooks. Only counties that sustained direct physical flood-related damage as a result of the flooding caused by the raised level of any covered waterway, between January 1, 2017 and June 30, 2017, shall be eligible to apply for a grant under this subdivision.

(b) This grant program shall not exceed in the aggregate $15,000,000. Individual grants shall be not less than $300,000 and not more than $500,000, provided however, counties may jointly apply for such grants, and the amount for such joint grants may equal the sum of the amounts that would have been separately available to the individual counties making such joint application.

(c) The empire state development corporation, in consultation with the department of environmental conservation and the environmental facilities corporation, is hereby empowered to establish grant guidelines and additional eligibility criteria, based on available flood damage data provided by applicable state and/or federal agencies, as it deems necessary to effectuate the administration of this program. In providing assistance pursuant to this subdivision, the empire state development corporation shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies including the International Joint Commission. Priority also may be given to remediation which if not undertaken may result in additional flooding.

6. (a) Municipalities and special districts in the county of Chautauqua, Cattaraugus and Allegany that sustained direct physical flood related damage as a result of a severe storm and flooding which occurred on July 14 and 15, 2015 are eligible to apply for a grant under this subdivision.

(b) Municipalities and special districts in the county of Monroe that sustained direct physical storm related damage as a result of a severe storm which occurred on March 8 and 9, 2017 are also eligible to apply for a grant under this subdivision.

(c) Grants under paragraph (a) of this subdivision, shall be in an amount of not more than $1,000,000. Grants under paragraph (b) of this subdivision, shall be in an amount of not more than $500,000.

(d) Grants under paragraph (a) of this subdivision, shall be used by grant recipients to repair damage to public infrastructure, including publicly owned roads, bridges, drainage and flood mitigation systems,

and any ancillary infrastructure necessary for the safe operation of the components thereof. Grants under paragraph (b) of this subdivision, shall be used by grant recipients for excess personnel costs and related contractual services necessary to making infrastructure safe for public use in time of the emergency.

(e) All such grants under this subdivision must be for costs or repairs which were not covered by any other federal, state or local recovery program or any third-party payers. In no event shall a grant under this subdivision be used for infrastructure repairs that are required due to normal wear and tear.

(f) The empire state development corporation shall administer this grant program, which shall not exceed in the aggregate $10,000,000. Such corporation is hereby empowered to establish grant guidelines and additional eligibility criteria, based on available flood damage data provided by applicable state and/or federal agencies, as it deems necessary to effectuate the administration of this program. In providing assistance pursuant to this subdivision, the empire state development corporation shall give preference to applicants that demonstrate the greatest need, based on available flood damage data provided by applicable state and/or federal agencies.

§ 2. Interagency response team. (a) The governor shall convene an interagency response team to assist in the development and implementation of the Lake Ontario-St. Lawrence Seaway flood recovery and International Joint Commission Plan 2014 mitigation grant program and to provide for a coordinated state response to the flooding caused by the raised level of any covered waterway, between January 1, 2017 and June 30, 2017, referred to in this section as the "flooding".

(b) The interagency response team shall consist of representatives from the empire state development corporation; division of homeland security and emergency services; division of housing and community renewal; department of environmental conservation; office of parks, recreation and historic preservation; department of health; division of state police; department of transportation; office of general services; department of state; division of military and naval affairs; department of corrections and community supervision; department of labor; state university of New York; New York state thruway authority; department of taxation and finance; public service commission; and any other agencies deemed appropriate by the governor. The interagency response team shall also include representatives from municipalities affected by the flooding, not-for-profit organizations engaged in disaster response and relief, and other local stakeholders affected by the flooding.

(c) The role of the interagency response team includes, but is not limited to: developing a comprehensive multi-agency plan to respond to the flooding; assisting in the allocation and distribution of state and federal resources within the affected counties; developing criteria for the distribution of state or federal grant funds, including the Lake Ontario-St. Lawrence Seaway flood recovery and International Joint Commission Plan 2014 mitigation grant program; ensuring the availability and continued potability of drinking water supplies; developing a plan to assist small businesses, farms, owners of multiple dwellings, owners of residences, and not-for-profit organizations with obtaining insurance coverage relating to flooding damage; and developing a multi-agency plan to respond to future water level increases or other issues related to the International Joint Commission Plan 2014.

§ 3. All or portions of the funds appropriated to the empire state development corporation may hereby be made available to support the grants pursuant for the purposes of this act.

§ 4. This act shall take effect immediately.

PART B

Section 1. Short title. This act shall be known and may be cited as the "Lake Ontario and connected waterways assessment relief act".

§ 2. Definitions. For the purposes of this act, the following terms shall have the following meanings:

1. "Eligible county" shall mean a county included in the governor's executive order 165 of 2017, declaring a state of emergency, dated May 3, 2017.

2. "Eligible municipality" shall mean a municipal corporation, as defined by subdivision 10 of section 102 of the real property tax law, which is either: (a) an eligible county; or (b) a city, town, village, special district, or school district that is wholly or partly contained within an eligible county.

3. "Impacted tax roll" shall mean the final assessment roll or, if applicable, the final assessment rolls, which satisfies both of the following conditions: (a) the roll is based upon a taxable status date occurring prior to May 3, 2017; and (b) taxes levied upon that roll by or on behalf of a participating municipality are payable without interest on or after May 3, 2017.

4. "Participating municipality" shall mean an eligible municipality that has passed a local law, ordinance, or resolution pursuant to section three of this act to provide assessment relief to property owners within such eligible municipality pursuant to the provisions of this act.

5. "Flooding" shall mean the lake shore and inland flooding and accelerated erosion that occurred as a result of heavy rainfall and the rising water level of Lake Ontario and any connected inland waterways or estuaries within an eligible county during the period beginning April 1, 2017 and ending July 1, 2017.

6. "Total assessed value" shall mean the total assessed value on the parcel prior to any and all exemption adjustments.

7. "Improved value" shall mean the market value of the real property improvements excluding the land.

8. "Property" shall mean real property, property or land as defined under paragraphs (a) through (g) of subdivision 12 of section 102 of the real property tax law.

§ 3. Local option. An eligible municipality may exercise the provisions of this act if its governing body shall, by the forty-fifth day following the date upon which this act is approved by the governor, pass a local law or in the case of a school district a resolution adopting the provisions of this act. An eligible municipality may provide assessment relief for real property impacted by flooding located within such municipality as provided in paragraphs (a), (b), (c) and/or (d) of subdivision one of section four of this act only if its governing body specifically elected to do so as part of such local law or resolution.

§ 4. Assessment relief for flood victims in an eligible county. 1. Notwithstanding any provisions of law to the contrary, where real property impacted by flooding is located within a participating municipality, assessment relief shall be granted as follows:

(a) If a participating municipality has elected to provide assessment relief for real property that lost at least ten percent but less than twenty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by fifteen percent for purposes of the participating municipality on the impacted tax roll;

(b) If a participating municipality has elected to provide assessment relief for real property that lost at least twenty percent but less than thirty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by twenty-five percent for purposes of the participating municipality on the impacted tax roll;

(c) If a participating municipality has elected to provide assessment relief for real property that lost at least thirty percent but less than forty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by thirty-five percent for purposes of the participating municipality on the impacted tax roll;

(d) If a participating municipality has elected to provide assessment relief for real property that lost at least forty percent but less than fifty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by forty-five percent for purposes of the participating municipality on the impacted tax roll;

(e) If the property lost at least fifty percent but less than sixty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by fifty-five percent for purposes of the participating municipality on the impacted tax roll;

(f) If the property lost at least sixty percent but less than seventy percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by sixty-five percent for purposes of the participating municipality on the impacted tax roll;

(g) If the property lost at least seventy percent but less than eighty percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by seventy-five percent for purposes of the participating municipality on the impacted tax roll;

(h) If the property lost at least eighty percent but less than ninety percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by eighty-five percent for purposes of the participating municipality on the impacted tax roll;

(i) If the property lost at least ninety percent but less than one hundred percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by ninety-five percent for purposes of the participating municipality on the impacted tax roll; and

(j) If the property lost one hundred percent of its improved value due to flooding, the assessed value attributable to the improvements shall be reduced by one hundred percent for purposes of the participating municipality on the impacted tax roll.

2. The percentage loss in improved value for the purposes of subdivision one of this section shall be adopted by the assessor, determined in a manner provided by this act, subject to review by the board of assessment review.

3. No reduction in assessed value shall be granted pursuant to this act except as specified in subdivision one of this section for such counties. No reduction in assessed value shall be granted pursuant to this section for purposes of any county, city, town, village or school district which has not adopted the provisions of this act.

4. To receive such relief pursuant to this section, the property owner shall submit a written request to the assessor on a form approved by the commissioner of the department of taxation and finance within 120 days following the date upon which this act is approved by the governor. Such request shall attach any and all reports prepared by, but not limited to, an insurance adjuster, real property appraiser or broker that describe in reasonable detail the damage caused to the property by the flooding and the condition of the property following the flooding and may be accompanied by any other supporting documentation. A failure on the part of an assessor to act on an application for assessment relief for a property, which would otherwise be eligible for such assessment relief, shall be considered a clerical error under paragraph (c) of subdivision 2 of section 550 of the real property tax law.

5. Upon receiving such a request, the assessor shall make a finding, as to whether the property lost at least 50 percent of its improved value or, if a participating municipality has elected to provide assessment relief for real property that lost a lesser percentage of improved value, such lesser percentage of its improved value as a result of flooding, and thereafter the assessor, shall adopt or classify the percentage loss of improved value within one of the following ranges:

(a) If a participating municipality has elected to provide assessment relief for real property that lost at least ten percent but less than twenty percent of its improved value due to flooding, at least ten percent but less than twenty percent;

(b) If a participating municipality has elected to provide assessment relief for real property that lost at least twenty percent but less than thirty percent of its improved value due to flooding, at least twenty percent but less than thirty percent;

(c) If a participating municipality has elected to provide assessment relief for real property that lost at least thirty percent but less than forty percent of its improved value due to flooding, at least thirty percent but less than forty percent;

(d) If a participating municipality has elected to provide assessment relief for real property that lost at least forty percent but less than fifty percent of its improved value due to flooding, at least forty percent but less than fifty percent;

(e) At least fifty percent but less than sixty percent;

(f) At least sixty percent but less than seventy percent;

(g) At least seventy percent but less than eighty percent;

(h) At least eighty percent but less than ninety percent;

(i) At least ninety percent but less than one hundred percent; and

(j) One hundred percent.

6. The assessor shall mail written notice of such findings to the property owner and the participating municipality. Where the assessor finds that the loss in improved value is less than fifty percent or, if a participating municipality has elected to provide assessment relief for real property located within such participating municipality for a lesser percentage, is less than such lesser percentage, or classifies the loss within a lower range than the property owner believes is warranted, the property owner may file a complaint with the board of assessment review. Such board shall reconvene upon 10 days written notice to the property owner and assessor to hear the appeal and determine the matter, and shall mail written notice of its determination to the assessor and property owner. The provisions of article 5 of the real property tax law shall govern the review process to the extent practicable. For the purposes of this act only, the applicant may commence with-

in 30 days of service of a written determination, a proceeding under title 1 of article 7 of the real property tax law, or, if applicable, under title 1-A of article 7 of the real property tax law. Sections 727 and 739 of the real property tax law shall not apply.

7. Where property has lost at least fifty percent of its improved value or, if a participating municipality has elected to provide assessment relief for real property that lost a lesser percentage of improved value, such lesser percentage due to flooding, the assessed value attributable to the improvements on the property on the impacted assessment roll shall be reduced by the appropriate percentage specified in subdivision one of this section, provided that any exemptions which the property may be receiving shall be adjusted as necessary to account for such reduction in the total assessed value. To the extent the total assessed value of the property originally appearing on such roll exceeds the amount to which it should be reduced pursuant to this act, the excess shall be considered an error in essential fact as defined by subdivision 3 of section 550 of the real property tax law. If the error appears on a tax roll, the tax roll shall be corrected in the manner provided by section 554 of the real property tax law or a refund or credit of taxes shall be granted in the manner provided by section 556 or section 556-b of the real property tax law. If the error appears on a final assessment roll but not on a tax roll, such final assessment roll shall be corrected in the manner provided by section 553 of the real property tax law. The errors in essential fact found pursuant to this act on either the tax roll or final assessment roll, upon application to the county director of real property tax services, shall be forwarded by the county director of real property tax services immediately to the levying body for an immediate order setting forth the appropriate correction.

8. The rights contained in this act shall not otherwise diminish any other legally available right of any property owner or party who may otherwise lawfully challenge the valuation or assessment of any real property or improvements thereon. All remaining rights hereby remain and shall be available to the party to whom such rights would otherwise be available notwithstanding this act.

§ 5. Guidance memorandum. The commissioner of taxation and finance is authorized to develop a guidance memorandum for use by assessing units. Such guidance memorandum shall assist with the implementation of this act and shall be deemed to be advisory on all assessing units in counties which implement the provisions of this act. The guidance memorandum shall have no force or effect or serve as authority for any other act of assessing units or of the interpretation or implementation of the laws of the state of New York except as they relate to the specific implementation of this act.

§ 6. School districts held harmless. Each school district that is wholly or partially contained within an eligible county shall be held harmless by the state for any reduction in state aid that would have been paid as tax savings pursuant to section 1306-a of the real property tax law incurred due to the provisions of this act.

§ 7. Bonds authorized. Serial bonds, and in advance of such, bond anticipation notes, are hereby authorized pursuant to subdivision 33-d of paragraph a of section 11.00 of the local finance law, provided, however, that any federal community development block grant funding received by such participating municipality, in relation to loss of property tax funding, shall first be used to defease, upon maturity, the interest and principal of any such bond or note so outstanding.

§ 8. Paragraph a of section 11.00 of the local finance law is amended by adding a new subdivision 33-d to read as follows:

33-d. Real property tax refunds and credits. Payments of exemptions, refunds, or credits for real property tax, sewer and water rents, rates and charges and all other real property taxes to be made by a municipality, school district or district corporation as a result of participating in the Lake Ontario and connected waterways assessment relief act, ten years.

§ 9. 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 provisions had not been included herein.

§ 10. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after May 3, 2017.

PART C

Section 1. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 42 to read as follows:

(42) Distributions from an eligible retirement plan, as such term is defined in subparagraph (B) of paragraph (8) of subsection (c) of section four hundred two of the Internal Revenue Code, made on or after April first, two thousand seventeen and before April second, two thousand twenty-two. In order to be subtracted from federal adjusted gross income, the taxpayer's primary residence must have incurred severe damage due to coastal flooding, widespread erosion and water damage and such primary residence was located in the affected disaster area pursuant to executive order one hundred sixty-five of two thousand seventeen, declaring a state of emergency, dated May third, two thousand seventeen.

§ 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2017.

§ 2. 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 judgement 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 judgement shall have been rendered. It is hereby declared to be the intent of the legislative that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through C of this act shall be as specifically set forth in the last section of such Parts.