STATE OF NEW YORK

7440

2019-2020 Regular Sessions

IN ASSEMBLY

May 3, 2019

Introduced by M. of A. THIELE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT in relation to authorizing the county of Suffolk to establish a water quality restoration fund to be financed by a water quality restoration fee on water usage in the county; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "Suffolk county water quality restoration act".

§ 2. Legislative intent. Suffolk county's water resources are unique in the nation and of exceptional importance to the State of New York because of the economic, environmental and public health values that Suffolk county's water resources provide to the people who live and recreate in Suffolk county. Suffolk county, with a population larger than 11 states, derives its drinking water from a sole-source aquifer, as specifically designated by the US Environmental Protection Agency. The full water cycle is impacted by increasing quantities of nutrients, pathogens, pesticides, volatile organic contaminants and saltwater intrusion, as well as a number of merging threats such as prescription drugs and sea level rise. While all sources of water pollution are concerning, pollution from sanitary systems has clearly emerged as the most widespread and least well addressed category of water pollutants in Suffolk county.

As a result of these environmental impacts, the county 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 the resiliency of its protective coastal ecosystems. These degraded conditions have already decimated Long Island's once robust shellfish industry and will have increasingly negative impacts on the island's entire

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

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economy as well as the quality of life and public health for the millions of residents of the region.

The purpose of this act is to sanction the creation of a water quality restoration fund to finance the protection, preservation, and rehabilitation of subterranean and surface waters. This act would allow the funding of projects that will mitigate wastewater pollutants utilizing the best available technology. Replacing underperforming cesspools and septic systems, especially in nutrient sensitive areas, will minimize nutrient loading into high groundwater and groundwater-fed waters.

Given the funding requirements, this legislation would expand the power of Suffolk county to generate dedicated, equitable funding sources. These funds would be expended on various wastewater treatment systems to mitigate pollution which will provide aquifer and surface water restoration and protection. To that end, this act would implement recommendations delineated in the Suffolk County Action Plan. It is the judgment of the legislature that the sustainability of the county's aquifer and drinking water supply, surface and tidal waters and estuaries is a county-wide concern and that all sewer and wastewater infrastructure projects funded through a water quality restoration fund established hereunder shall be a benefit to the county as a whole and to all residents therein.

§ 3. Water quality restoration fee. (a) Notwithstanding any provision of law to the contrary, the county of Suffolk is authorized to establish by local law, subject to mandatory referendum pursuant to section 23 of the municipal home rule law, a water quality restoration fund to be financed by a water quality restoration fee at a rate not to exceed 1.5 cents per 1,000 gallons of water usage per property.

(b) Such fee shall be collected on all properties in the county of Suffolk except as provided herein. Water usage on public land or land used as part of a farm operation shall be excluded from such fee. For the purposes of this act "public land" shall mean any land exempt from real property taxation pursuant to title 1 of article 4 of the real property tax law. For the purposes of this act, "farm operation" shall have the same meaning as provided for in section 301 of the agriculture and markets law.

(c) In the case of properties that are served by the Suffolk County Water Authority or a water district established pursuant to state law, the fee shall be based on actual water usage for such properties as calculated by the water provider; the Suffolk County Water Authority or the water district, respectively.

(d) In all other cases, the county, by local law, shall establish a schedule of annual water usage for each category of land use in the county, including but not limited to residential, commercial, industrial and institutional uses. The local law may provide for subcategories for each land use.

(e) The fee imposed by the county under this section shall be a usage fee. Said fee shall be collected in the same manner as charges and revenues for water, water quality treatment, sewage, wastewater disposal and refuse collection pursuant to section 266 of the county law.

(f) The local law may also provide for an exemption from the water restoration fee. Such exemption shall not be less than fifty thousand gallons of water usage nor more than one hundred twenty-five thousand (125,000) gallons of water usage.

§ 4. Individual customer water usage information to be provided to the county of Suffolk. Notwithstanding any provision of law to the contrary, the Suffolk County Water Authority and water districts in the

county of Suffolk, as the case may be, shall each enter into agreements with the county of Suffolk, to be approved by resolution adopted by the county legislature, which agreements shall govern the provision of individual customer water usage information of said authority and water districts required for the collection, administration and payment of the water quality restoration fee pursuant to section three of this act by the county of Suffolk. Such agreement shall have the force and effect of a rule or regulation of the Suffolk County Water Authority and all such water districts in the county, as the case may be, and it shall be filed and published in accordance with the requirements of any law, ordinance, rule or regulation relating thereto.

§ 5. Water quality restoration fund. Notwithstanding any provision of law to the contrary, the net collections from the fee imposed pursuant to section three of this act shall, be deposited in a special fund by the county of Suffolk, to be designated as the water quality restoration fund, to be created by said county therefor, separate and apart from any other funds and accounts of the county. In no event shall monies deposited in the fund be transferred to any other account. Deposits into the fund may include revenues of Suffolk county from whatever source and shall include, at a minimum, all net revenues from the water quality restoration fee imposed pursuant to section three of this act. The fund shall also be authorized to accept gifts of funds. Interest accrued by monies deposited into the fund shall be credited to the fund. Nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any project authorized pursuant to this section. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the local finance law consistent with effectuating the purposes of this section. Where Suffolk county finances a project, in whole, or in part, pursuant to the local finance law, the resolution authorizing such indebtedness shall be accompanied by a report from the county executive demonstrating how said indebtedness will be repaid by the fund. Said report shall include an estimate of projected revenues of the fund during the period of indebtedness. The report shall also provide an accounting of all other indebtedness incurred against the fund to be repaid for the same period. The county legislature shall make findings by resolution that there will be sufficient revenue to repay such indebtedness in its entirety from the fund before authorizing such indebtedness. Monies in said fund may be appropriated from or expended in any fiscal year to implement the powers set forth in this act and to repay any indebtedness or obligations incurred pursuant to the local finance law for the purposes authorized pursuant to this act.

§ 6. Purposes of the fund. (a) Definition. "Water quality improvement project" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a wastewater treatment facility, including individual hookups, or an individual septic system, including an alternative wastewater treatment facility or an individual septic system with active treatment, to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants, including permanent or pilot demonstration wastewater treatment projects, or equipment or furnishings thereof. Such projects shall have as their purpose the remediation of existing water quality to meet specific water quality standards. Projects which permit or accommodate new growth shall not be included within this definition. Not less than 50% of the funds shall be used for the upgrade of individual septic systems.

(b) Monies within the Suffolk county water quality restoration fund may, as authorized by this act, be used for the following purposes: (1) the preparation of an action plan to protect, preserve, and rehabilitate groundwater, surface water, and drinking water; (2) the construction of water quality improvement projects; (3) the establishment of a program for residents of the county of Suffolk for grants and low-interest loans as incentives to construct individual septic systems which qualify as water quality improvement projects; (4) revenue sharing to towns and villages to fund any of the purposes permitted by this section; (5) monitoring the quality and quantity of groundwater, surface water, and drinking water, and the analysis of data; (6) public education relating to protecting, preserving, and enhancing groundwater, surface water, and drinking water; and (7) land acquisition projects for source water protection.

(c) Except for the preparation of the action plan, itself, no monies may be expended until the action plan has been prepared and approved by the water quality restoration fund board of trustees.

§ 7. Water quality restoration fund board of trustees. The county shall establish a water quality restoration fund board of trustees to review and approve the action plan. Said approval shall be in addition to all other approvals required by law. The board of trustees shall consist of ten members, who shall serve without compensation. Each town, by resolution of the town board, shall appoint a member to the board. A majority of the members of the board shall have demonstrated experience in areas related to water quality.

§ 8. Water quality restoration advisory committee. There is hereby created a water quality restoration advisory committee to actively assist and advise the board of trustees in the preparation, adoption and implementation of the action plan required by section nine of this act. The committee shall consist of not more than twenty-five members which shall include representatives of environmental groups, economic development and real estate interests, farmers, water suppliers, civic groups, planners, biologists, and water quality scientists and recreational interests. The members of the committee shall serve without compensation. The committee by a majority vote shall elect a chairperson. The board of trustees shall meet periodically with the advisory committee, make available working drafts of the action plan and other documents, and shall provide services to the advisory committee as are necessary and appropriate to carry out its functions under this act. The county by resolution of the county legislature, shall appoint the members of the board.

§ 9. Action plan. The water quality restoration fund board of trustees shall prepare, review and approve the action plan within one year of the effective date of this act. The board of trustees shall conduct a public hearing on the plan before its adoption or subsequent amendment. Said plan shall list every water quality restoration project which the county plans to undertake pursuant to the fund and shall state how such project would improve existing water quality. Projects which accommodate new growth as opposed to the remediation of water quality shall not qualify for funding under this section. Funds from the fund may only be expended for projects which have been included in said plan. Said plan shall be updated not less than once every five years. The action plan shall be consistent with state, federal, county, and local government land use and wastewater management plans.

§ 10. Annual audit. The county shall annually commission an independent audit of the fund. The audit shall be conducted by an independent

certified public accountant or an independent public accountant. Said audit shall be performed by a certified public accountant or an independent public accountant other than the one that performs the general audit of the county's finances. Such audit shall be an examination of the fund and shall determine whether the fund has been administered consistent with the provisions of this act and all other applicable provisions of state law. Said audit shall be initiated within sixty days of the close of the fiscal year of the county and shall be completed within one hundred twenty days of the close of the fiscal year. A copy of the audit shall be submitted annually to the state comptroller and the county comptroller. A copy of the audit shall be made available to the public within thirty days of its completion. A notice of the completion of the audit shall be published in the official newspaper of the county and shall also be posted on the internet website for the county. The cost of the audit may be a charge to the fund.

§ 11. Amendment by mandatory referendum only. Where the provisions of this act have been adopted by local law subject to mandatory referendum, said local law may only be amended, modified, repealed, or altered by enactment of another local law subject to mandatory referendum under the municipal home rule law.

§ 12. Severability. If any provision of this act or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder of this act, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 13. This act shall take effect immediately, provided that section three of this act shall remain in full force and effect until December 31, 2050, when upon such date the provisions of such section shall expire and be deemed repealed.