

# STATE OF NEW YORK

10001

## IN ASSEMBLY

March 4, 2020

Introduced by M. of A. THIELE, PALUMBO, McDONOUGH, LiPETRI, RA, MIKULIN, DeSTEFANO, SMITH -- Multi-Sponsored by -- M. of A. FITZPATRICK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the regulation of mining and the reclamation of mines within counties with a population of one million or more which draw their primary source of drinking water for a majority of county residents from a designated sole source aquifer; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Section 23-2703 of the environmental conservation law is  
2 REPEALED and a new section 23-2703 is added to read as follows:

3 § 23-2703. Declaration of policy.

4 1. a. The legislature hereby declares that it is the policy of this  
5 state to foster and encourage the development of an economically sound  
6 and stable mining industry, and the orderly development of domestic  
7 mineral resources and reserves necessary to assure satisfaction of  
8 economic needs compatible with sound environmental management practices.  
9 Sound environmental management practices shall include the protection of  
10 water resources and public health within counties with a population of  
11 one million or more which draw their primary source of drinking water  
12 for a majority of county residents from a designated sole source aqu-  
13 ifer.

14 b. The legislature further declares it to be the policy of this state  
15 to provide for the management and planning for the use of these non-re-  
16 newable natural resources and to provide, in conjunction with such  
17 mining operations, for reclamation of affected lands; to encourage  
18 productive use including but not limited to the planting of forests, the  
19 planting of crops for harvest, the seeding of grass and legumes for  
20 grazing purposes, the protection and enhancement of wildlife and aquatic  
21 resources, the establishment of recreational, home, commercial, and  
22 industrial sites; to provide for the conservation, development, utiliza-  
23 tion, management and appropriate use of all the natural resources of

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

LBD14356-04-0

1 such areas for compatible multiple purposes; to prevent pollution; to  
2 protect and perpetuate the taxable value of property; and to protect the  
3 health, safety and general welfare of the people, as well as the natural  
4 beauty and aesthetic values in the affected areas of the state.

5 2. Except as provided by this subdivision and by subdivision three of  
6 this section, this title shall supersede all other state and local laws  
7 relating to the extractive mining industry. Nothing in this title shall  
8 be construed to prevent any local government from:

9 a. enacting or enforcing local laws or ordinances of general applica-  
10 bility, except that such local laws or ordinances shall not regulate  
11 mining and/or reclamation activities regulated by state statute, regu-  
12 lation, or permit; or

13 b. enacting or enforcing local zoning ordinances or laws which deter-  
14 mine permissible uses in zoning districts. Where mining is designated a  
15 permissible use in a zoning district and allowed by special use permit,  
16 conditions placed on such special use permits shall be limited to the  
17 following:

18 (i) ingress and egress to public thoroughfares controlled by the local  
19 government;

20 (ii) routing of mineral transport vehicles on roads controlled by the  
21 local government;

22 (iii) requirements and conditions as specified in the permit issued by  
23 the department under this title concerning setback from property bounda-  
24 ries and public thoroughfare rights-of-way, natural or man-made barriers  
25 to restrict access, if required, dust control and hours of operation,  
26 when such requirements and conditions are established pursuant to subdi-  
27 vision three of section 23-2711 of this title;

28 (iv) enforcement of reclamation requirements contained in mined land  
29 reclamation permits issued by the state; or

30 c. enacting or enforcing local laws or ordinances regulating mining or  
31 the reclamation of mines not required to be permitted by the state.

32 d. In addition to the authority granted to local governments pursuant  
33 to this subdivision, within counties with a population of one million or  
34 more which draw their primary source of drinking water for a majority of  
35 county residents from a designated sole source aquifer, local govern-  
36 ments shall also be empowered to regulate mining and/or reclamation  
37 activities for the protection of water quality and the public health, as  
38 permitted by subdivision three of this section.

39 3. Within counties with a population of one million or more which draw  
40 their primary source of drinking water for a majority of county resi-  
41 dents from a designated sole source aquifer, local governments shall  
42 have concurrent authority with the department to regulate mining by  
43 local law for the purposes of the protection of water quality and public  
44 health. Such local laws may provide for but are not limited to:

45 a. the regulation or prohibition of mining on properties where it is  
46 determined that mining is inconsistent with water quality protection and  
47 public health; and

48 b. the monitoring of groundwater impacts resulting from mining or the  
49 reclamation of mines; and

50 c. the regulation or prohibition of mining where the state or a local  
51 government has documented contamination to groundwater or drinking water  
52 on the site or attributable to the site, which exceeds maximum contam-  
53 inant levels under state or federal drinking water or groundwater stand-  
54 ards; and

55 d. the regulation or prohibition of the co-location of mining with any  
56 facility for the receipt, processing, sale, storage, or transfer of

1 waste of any kind. The provisions of this subdivision shall apply  
2 regardless of whether a permit or registration for such a facility is  
3 required by this chapter. Such waste, shall include, but not be limited  
4 to garbage, manure, trees, septage, brush, stumps, leaves, yard clip-  
5 pings, street sweepings, asphalt, concrete, stone, crushed stone, top  
6 soil, debris, construction aggregates, land clearing debris, and  
7 construction and demolition debris; and

8 e. the termination of mining sites which are existing non-conforming  
9 uses under local zoning laws or ordinances where such termination is  
10 necessary for the protection of water quality and the public health; and

11 f. the reclamation of such mining sites; and

12 g. any other regulation necessary for the purposes of protection of  
13 water quality and the public health.

14 4. a. No agency of this state shall process and approve an application  
15 for a permit to mine pursuant to this title within counties with a popu-  
16 lation of one million or more which draw their primary source of drink-  
17 ing water for a majority of county residents from a designated sole  
18 source aquifer, if local zoning laws or ordinances prohibit mining uses  
19 within the area proposed to be mined.

20 b. No agency of this state shall process and approve an application  
21 for a permit to mine pursuant to this title, within counties with a  
22 population of one million or more which draw their primary source of  
23 drinking water for a majority of county residents from a designated sole  
24 source aquifer, if:

25 (i) local laws enacted pursuant to subdivision three of this section  
26 prohibit mining of the proposed mining site; or

27 (ii) a local government has denied a permit for mining on a proposed  
28 mining site pursuant to a local law authorized by subdivision three of  
29 this section.

30 c. No agency of the state shall approve an application for mining  
31 within counties with a population of one million or more which draw  
32 their primary source of drinking water for a majority of county resi-  
33 dents from a designated sole source aquifer until each local government  
34 with jurisdiction of mining pursuant to this section has approved such  
35 application.

36 d. This subdivision shall apply to all applications for mining,  
37 including applications for new mining, expansion of mining on existing  
38 mining sites, and renewals of existing permits.

39 e. The requirements of this section shall be in addition to the  
40 requirements of section 23-2711 of this title. To the extent that the  
41 provisions of this section are inconsistent with the provisions of  
42 subdivision three of section 23-2711 of this title, this subdivision  
43 shall supersede and govern mining applications within counties with a  
44 population of one million or more which draw their primary source of  
45 drinking water for a majority of county residents from a designated sole  
46 source aquifer.

47 § 2. Subdivision 8 of section 23-2705 of the environmental conserva-  
48 tion law, as amended by chapter 166 of the laws of 1991, is amended to  
49 read as follows:

50 8. "Mining" means the extraction of overburden and minerals from the  
51 earth; the preparation and processing of minerals, including any activ-  
52 ities or processes or parts thereof for the extraction or removal of  
53 minerals from their original location and the preparation, washing,  
54 cleaning, crushing, stockpiling or other processing of minerals at the  
55 mine location so as to make them suitable for commercial, industrial, or  
56 construction use; exclusive of manufacturing processes, at the mine

1 location; the removal of such materials through sale or exchange, or for  
2 commercial, industrial or municipal use; and the disposition of overbur-  
3 den, tailings and waste at the mine location. "Mining" shall not include  
4 the excavation, removal and disposition of minerals from construction  
5 projects, exclusive of the creation of water bodies, or excavations in  
6 aid of agricultural activities, except within counties with a population  
7 of one million or more which draw their primary source of drinking water  
8 for a majority of county residents from a designated sole source  
9 aquifer.

10 § 3. Paragraph (b) of subdivision 3 of section 23-2711 of the environ-  
11 mental conservation law, as added by chapter 166 of the laws of 1991, is  
12 amended to read as follows:

13 (b) If the department finds that the determinations made by the local  
14 government pursuant to paragraph (a) of this subdivision are reasonable  
15 and necessary, the department shall incorporate these into the permit,  
16 if one is issued. If the department does not agree that the determi-  
17 nations are justifiable, then the department shall provide a written  
18 statement to the local government and the applicant, as to the reason or  
19 reasons why the whole or a part of any of the determinations was not  
20 incorporated. The provisions of this paragraph shall not apply to any  
21 determination made by a local government pursuant to subdivisions three  
22 and four of section 23-2703 of this title. No determination, decision or  
23 local law enacted by a local government pursuant to subdivisions three  
24 and four of section 23-2703 of this title shall be reviewable by the  
25 department and shall be binding upon the department.

26 § 4. Section 23-2721 of the environmental conservation law, as amended  
27 by chapter 477 of the laws of 1976 and as renumbered by chapter 166 of  
28 the laws of 1991, is amended to read as follows:

29 § 23-2721. Judicial review.

30 Any act, omission, determination or order of the department or any  
31 local government pursuant to section 23-2703 of this title or of any  
32 officer or employee thereof, pursuant to or within the scope of this  
33 title, may be reviewed in accordance with article seventy-eight of the  
34 civil practice law and rules.

35 § 5. This act shall take effect immediately.