STATE OF NEW YORK

9499

IN SENATE

July 11, 2022

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law and the state finance law, in relation to establishing the public water justice act

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 "public water justice act".

§ 2. Section 15-0109 of the environmental conservation law is amended to read as follows:

§ 15-0109. General jurisdiction.

The department shall exercise its powers and perform its duties in any matter affecting the construction of improvements to or developments of water resources for the public health, safety or welfare, including but not limited to the supply of potable waters for the various municipalities and inhabitants thereof, the use of water for industrial**,** **commercial,** and agricultural operations, the developed and undeveloped water power of the state, the facilitation of proper drainage and the regulation of flow and improvement of the rivers of the state.

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

TITLE 35

PUBLIC WATER JUSTICE

Section 15-3501. Definitions.
15-3503. Legislative findings and intent.
15-3505. Prohibition of diversion or transfer for the sale of water.
15-3507. Exceptions to prohibitions.
15-3509. Authorized sale of water.
15-3511. Use of public water justice funds.
15-3513. Rule making authority.

§ 15-3501. Definitions.

As used in this title the following terms shall have the following meanings:

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

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1. "Affordability" means measures or other assistance to assure equal access to adequate clean, safe water and sanitation, without discrimination, interference or inequitable or unjust termination of the right of access to water by any person or household of persons with insufficient income from hardship or disability to pay the full rate or price for access to a minimum water supply to protect health and sanitation for their dwelling.

2. "Applicant" means a person, corporation, or other organization or entity applying for a license under this title.

3. "Community public water supply" or "public community water supply" means a public water supply that provides year-round service to not fewer than fifteen living units or which regularly provides year-round service to not fewer than twenty-five individuals.

4. "Customer service connection" means the pipe between a water main and customer site piping or building plumbing system.

5. "Customer site piping" means an underground piping system owned or controlled by a customer that conveys water from such customer's customer service connection to building plumbing systems and other points of use on lands owned or controlled by such customer. "Customer site piping" shall not include any system that incorporates treatment to protect public health.

6. "Disadvantaged community" shall mean such communities as identified pursuant to section 75-0111 of this chapter.

7. "Diversion" means the transfer of water by any means, including in a container intended for an immediate or end-use consumer from its source in one lake or watershed to another lake or watershed.

8. "License" means the authorization pursuant to section 15-3509 of this title by the state to allow the withdrawal, removal, diversion and/or transfer of waters of the state by any person for the purpose of the production and sale of bottled water.

9. "Licensee" means the holder of a license under this title.

10. "Public water supply" means a community public water supply or waterworks system that provides water for drinking or household purposes to persons other than the supplier of such water, and shall not include either of the following:

(a) A waterworks system that supplies water to only one dwelling or multiple dwelling, as such terms are defined by section four of the multiple dwelling law; or

(b) A waterworks system that consists solely of customer site piping.

11. "Royalty fee" means compensation to the state for the authorization of a license to allow a withdrawal, diversion or transfer by any person from the sovereign waters of the state for the purpose of producing and packaging water for the sale of bottled water under section 15-3509 of this title.

12. "Sale of water" means the production, packaging or delivery of water from a water source or public water supply in containers or by any other means in exchange for money or other consideration.

13. "Sale of bottled water" means water withdrawn from a water source or public water supply and transferred or diverted to a plant or other facility for the sale of water in a container or package of not more than 5.7 gallons.

14. "Spring water" means spring water as defined in 21 C.F.R. 165.110 for bottled water.

15. "Watershed" means the watershed of primary rivers and the sub-watersheds of their tributary streams and creeks.

16. "Waterworks system" means a system of pipes and structures through which water is obtained and distributed, including but not limited to wells and well structures, intakes and cribs, pumping stations, treatment plants, storage tanks, pipelines and appurtenances, or a combination thereof, actually used or intended for use for the purpose of furnishing water for drinking or household purposes.

17. "Water main" means a pipe owned or controlled by a supplier that may convey water to a customer service connection or to a fire hydrant.

18. "Waters of the state" groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state, and shall include water withdrawn from the waters of the state and delivered through public waterworks or public water utility systems. Waters of the state shall not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

19. "Withdrawal" means the removal of water from surface water or groundwater.

20. "Public water justice fund" means such fund established pursuant to section ninety-nine-qq of the state finance law.

§ 15-3503. Legislative findings and intent.

1. The waters of the state are held by the state as sovereign and in public trust for the benefit of the people of the state of New York.

2. As trustee, the state of New York shall protect and sustain the integrity of flows, levels, and quality of water, fish and aquatic habitat for the use and enjoyment by citizens now and in the future.

3. As trustee, and based on the paramount public interest in the waters of the state and public health of its citizens, the state shall provide for and protect the right of access to safe drinking water, water sources, public water supply, public waterworks and infrastructure, public health, and fishing, navigation, recreation, conservation, and the reasonable use of water in connection with the ownership or lawful occupancy of land, not limited to domestic, agricultural, commercial, industrial and public utility uses.

§ 15-3505. Prohibition of diversion or transfer for the sale of water.

Except as otherwise specifically provided in this title, no waters of the state shall be withdrawn, taken, diverted, and/or transferred out of any watershed of the state for the purpose of the sale of such water in any size container, package, or in any other manner to another watershed within or outside of the territorial boundaries of the state.

§ 15-3507. Exceptions to prohibitions.

1. Prohibited acts under section 15-3505 of this title shall not apply to any of the following:

(a) The withdrawal, treatment, distribution, and delivery of water services by a public or private water utility or community public water supply or waterworks system. The exception under this subdivision shall not apply to the distribution or delivery of water to a person who receives water from a public waterworks or public water utility system for the purpose of the sale of such water.

(b) Products into which water from a private well or public waterworks system or public water utility is incorporated, or water incorporated into or used in a product other than water itself.

(c) The sale of water on premises from a private well or public waterworks system in a glass, bottle or other container, incidental to a wholesale or retail restaurant, food service or other business or commercial operation.

(d) The sale of water of the state in containers with a capacity of not more than 5.7 gallons, but only if all of the following standards are duly established and determined to be met by the department:

(i) such transfer and diversion of water is part of bottled water production and sale facilities and operations already existing upon the effective date of this section, subject to compliance with all other provisions of this title, and authorized by the department pursuant to section 15-3509 of this title;

(ii) determination that the water source that is transferred or diverted is not spring water, unless otherwise authorized by the department under section 15-3509 of this title;

(iii) determination that the withdrawal and transfer for the sale of water will not impair or interfere with another water source, community public water supply or any other public or private water well, infrastructure, waterworks system or with the water services and the public health, safety and welfare.

(iv) determination that the withdrawal, removal, transfer and the sale of bottled water is in compliance with all other federal, state, local law and regulations; and

(v) issuance of license and payment of a royalty as authorized and determined by the department to sell bottled water in containers with a capacity of not more than 5.7 gallons, as provided in section 15-3509 of this title.

2. The prohibitions under this section shall not apply to a lawful and reasonable use of the waters of the state in connection with the use and enjoyment of land by an owner or occupant or their guests, including any lawfully recognized traditional and artificial reasonable uses of water such as agriculture, manufacturing, generation of electricity or an industrial use or process. Except as otherwise specifically provided in this title, the sale of water withdrawn from the waters of the state shall not be a reasonable use.

§ 15-3509. Authorized sale of water.

1. The department is hereby authorized to issue a license to withdraw, take, remove, and/or transfer from the waters of the state for the sale of bottled water where the sale of such waters of the state shall be in full compliance with this title.

2. The department shall not issue or enter into any license or other agreement pursuant to subdivision one of this section for withdrawal, taking, and/or transfer of the waters of the state to a person or entity who proposes to engage in the sale of bottled water unless all of the following conditions are met:

(a) Such person or entity submits an application to the department along with proposed plans for bottled water facility and operation, or if such application is for the continued operation of a bottled water facility and operation already existing upon the effective date of this section, an application with a description of such exciting operations.

(b) For the licensing for the sale of bottled water from a municipal or community public waterworks or public water utility supply, the applicant has submitted certified proof that the water source is in compliance with all other legal requirements from the local department, board or local government that owns and operates the community public waterworks or public water system.

(c) Before approval of such license, the department shall provide written notice of the application of such license with conditions and proposed royalty fees as provided in subdivision three of this section, at least sixty days prior to such approval: to any local unit of govern-

ment, any community or public waterworks or water supply district, authority or department, any recognized tribal sovereign government, and to the applicant; to be published in a prominent newspaper with general circulation in the locale of the water source or supply; and to be posted on the department's website in a conspicuous manner. The department may on its own or upon request of an interested person provide for a public hearing, which shall be given the same public notice as provided in this paragraph. Such public notice shall provide at least a forty-five day comment period before approval of the license. Upon request of a local unit of government or recognized tribal sovereign government in which the water source or supply is located, the department shall meet and consult with the local unit of government or tribe not less than fifteen days before approval of the license.

(d) Before approval and issuance of the license, the department shall evaluate, assure, and duly establish that all of the following are met:

(i) The applicant has complied with the provisions of this title;

(ii) The applicant has shown, based on subparagraph (i) of this paragraph and all other available information, including public notice, hearing, participation and comments or consultation with local government, sovereign tribes recognized by treaty with the federal government or other interested persons as required by paragraph (d) of this subdivision, that the withdrawal and/or transfer of the waters of the state for the sale of bottled water is substantially in the public interest and shall not impair the public trust and public health, safety, and welfare;

(iii) The applicant has complied with the application and royalty fees required by subdivision three of this section;

(iv) Any conditions the department shall have required in the license or other agreement for the protection and promotion of the waters of the state, public trust in such waters and the public health, safety, and welfare of citizens and local community.

3. (a) Before processing an application for a license under subdivision two of this section, an applicant shall pay an application fee of five hundred dollars and a fee of five thousand dollars or more as determined by the department for reimbursement of the department's expenses for processing and evaluating the application.

(b) An applicant shall pay a royalty fee for the right to withdraw, remove and/or transfer the sovereign waters of the state or community public water supply for purposes of the sale of bottled water as follows:

(i) A licensee shall pay a royalty fee of not less than twenty-five cents per gallon for the right to withdraw, take and/or transfer the waters of the state for the sale of bottled water. Subject to public notice, hearing and comment as provided for in subdivision two of this section, the department may promulgate a higher fee per gallon based on a reasonable evaluation and determination of fair and adequate economic value for the right of sale of bottled water from the waters of the state.

(ii) The licensee or the community or municipal public water supply department or local government, as the case may be, shall file on the first day of each month, beginning thirty days after the date of the license, a written summary and report, with supporting data and information, the total volume of water withdrawn. The licensee shall pay the royalty fee required by this subdivision on a quarterly basis, beginning with the first day of the quarter of the year after the date of the approval and issuance of the license. The department may impose a late

fee according to a schedule of fees, payment, or interest established by the department pursuant to rules promulgated by the department.

(c) The department shall deposit the royalty fee collected from each licensee into the public water justice fund in accordance with all applicable laws and regulations.

(d) The department's expenses, including all reasonable expenses related to collection and management of fees under this section, shall be paid and a net royalty fee payment made to the public water justice fund on a quarterly basis, beginning with the third quarter after the effective date of this title or the issuance of the first license under this title, whichever occurs first.

(e) Where the water is from a water source or non-community supply that is from the waters of the state, the net proceeds from each licensee shall be deposited in the public water justice fund.

(f) Where the water is from a community public water supply or waterworks, which withdraws and distributes the waters of the state as a public service within its lawful territory, the net proceeds from each license or other agreement shall be deposited in the public water justice fund. Further, the department shall allocate an amount up to twenty-five percent of the net proceeds of the public water justice fund in any calendar year to the community public water supply department, district or authority from which the water is withdrawn, taken, diverted and/or transferred.

(g) For the purposes of this subdivision, the term "net proceeds" shall mean net proceeds from royalties under this section, minus costs and expenses.

4. (a) In addition to all other requirements of this title, a person or other entity shall not be permitted to withdraw and transfer more than fifty thousand gallons a day for the sale of bottled water as spring water unless it is established by the applicant and determined by the department that:

(i) there is sufficient existing actual data and information that characterizes to the fullest extent possible the hydrological and geological conditions required to accurately measure and calculate the effect on the flows, levels and other physical conditions of the groundwater, springs, wetlands, creeks, streams, lakes or ponds that have a direct hydrological connection to the spring water source; and

(ii) based on the actual data and information established under subparagraph (i) of this paragraph, the withdrawal and transfer of spring water shall not measurably diminish and impair the flow, level and other physical parameters of the wetlands, creeks, streams, lakes or ponds, fish and other wildlife and plant habitat or the public trust in such features, wildlife and habitat.

(b) Any decision or determination required by this section shall take into account and be conditioned on the potential for, or occurrences of, increased intensity and frequency of weather events due to changes in climate.

§ 15-3511. Use of public water justice funds.

The department shall direct the administration of the public water justice fund in accordance with the provisions of paragraph (f) of subdivision three of section 15-3509 of this title and section ninety-nine-qq of the state finance law. In directing the administration of such fund, the department shall consult with environmental justice groups and other environmental justice experts as determined appropriate by the department.

§ 15-3513. Rule making authority.

The department shall be authorized to promulgate any rules and regulations it may deem necessary to implement the provisions of this title.

§ 4. The state finance law is amended by adding a new section 99-qq to read as follows:

§ 99-qq. Public water justice fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "public water justice fund".

2. Such fund shall consist of all revenues received by the state, pursuant to the provisions of title thirty-five of article fifteen of the environmental conservation law, including but not limited to all bonuses, rentals, delayed rentals, royalties, penalties or fines for non-compliance collected by, or reserved by, the state under the licenses for the sale of bottled water established pursuant to such title.

3. (a) The moneys in such fund shall be expended for the following purposes:

(i) assistance for water affordability plans or other measures, including income affordability, assured low-cost minimum water use and conservation, innovative pricing, rates, tiers of water use and conservation, to assure equitable and affordable access to clean, safe water and sanitation;

(ii) protection, conservation, efficiency, sustainability and cleanup to assure safe, clean and adequate groundwater and surface water sources for drinking water and water supplies within the state, including but not limited to, new technologies, green infrastructure and enhanced resiliency and adaptability to predict extreme weather events or climatic changes;

(iii) protection of public health and individual health needs directly related to investigation, medical examination and water quality and medical monitoring; and

(iv) repair, improvement or replacement of any line that is determined to be a health risk to those who occupy any single or multi-family residential dwelling unit that connects to the public water main or pipeline system.

(b) Any interested municipal public water supply department, district, authority, or local government, or any person who lives within the territory or is served by a community public water works or public water utility may apply for a grant for one or more of the dedicated purposes of the public water justice fund under this section. The application, process, public notice, meetings, and decisions shall be processed by the department. The department shall apportion and allocate the grants of available funds in any given hearing in a fair and proportionate manner among applicants that in the discretion of the department best meets the intent and dedicated purposes of title thirty-five of article fifteen of the environmental conservation law and any rules or regulations promulgated thereto; except that there shall be a preference for up to thirty percent of the fund distributed in any year for assistance for affordability, disadvantaged communities and public health.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.