STATE OF NEW YORK

8993

IN ASSEMBLY

February 1, 2024

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the county law, the tax law and the Suffolk county water quality restoration act, in relation to the use of moneys from the water quality restoration fund

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

Section 1. Section 2 of part TT of chapter 58 of the laws of 2023 constituting the Suffolk county water quality restoration act, is amended to read as follows:

§ 2. Legislative intent. The county of Suffolk ("county"), with a population of one million five hundred thousand persons, has in excess of three hundred eighty thousand existing onsite wastewater disposal systems, comprised mostly of cesspools and septic systems, with two hundred nine thousand of these onsite systems in environmentally sensitive areas which could benefit from nitrogen-reducing technologies. The United States Environmental Protection Agency recognizes Long Island as having a sole source aquifer system for its drinking water supply. Suffolk county has an imminent need to preserve this valuable water resource by reducing the amount of nitrogen discharged into the groundwater by onsite systems. 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 emerging threats such as prescription drugs and sea level rise.

The Suffolk county subwatersheds wastewater plan ("SWP"), certified by the department of environmental conservation as a Nine Elements Watershed (9E) plan, has documented the devastating effects of high levels of nitrogen pollution, not only on the drinking water quality, but also on coastal ecosystems, dissolved oxygen, water clarity, eelgrass, wetlands, shellfish, coastal resilience and in triggering harmful algal blooms. The SWP is a long-term plan to address the need for wastewater treatment infrastructure throughout the county comprehensively over a period of fifty years. The SWP delineates the source and concentration of nitrogen loading in one hundred ninety-one subwat-

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

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ersheds throughout the county, and establishes nitrogen reduction goals for each watershed.

For many areas of the county, installing or connecting sewers is not a practical or cost-effective method of treating wastewater. For that reason, the SWP prescribes a hybrid approach that relies on sewering where feasible, and the replacement of cesspools and septic systems with innovative/alternative onsite wastewater treatment systems. The consolidation of any or all of the twenty-seven county sewer districts, as well as unsewered areas of the county, into a county-wide wastewater management district, the establishment of a water quality restoration fund, and a county board of trustees to monitor progress and the allocation of resources consistent with the goals of the SWP would allow for the implementation of a much needed integrated long-term wastewater solution for the county through comprehensive planning and management to improve water quality.

The purpose of this act is to create a water quality restoration fund to finance projects for the protection, preservation, and rehabilitation of groundwater and surface waters as recommended by the SWP. This act would allow the funding of projects that will mitigate wastewater pollutants utilizing the best available technology consistent with the SWP. The water quality restoration fund would be financed with a dedicated and recurring revenue source by the enactment of an additional sales and compensating use tax at the rate of one-eighth of one percent until 2060. **After deducting administrative and planning costs, fifty percent of the revenue shall be dedicated to funding individual septic system projects and fifty percent of the revenue shall be dedicated to funding projects related to wastewater treatment facilities.** Such tax would be enacted pursuant to a mandatory referendum.

This act shall also provide Suffolk county with the authority to create a county-wide wastewater management district through the consolidation of existing county sewer districts with currently unsewered areas of the county. A county-wide wastewater management district will provide an integrated and efficient approach to managing wastewater services across the county; allow the county to enhance and expand its incentive program to property owners to upgrade their wastewater treatment systems; to manage, monitor and enforce nitrogen reduction programs throughout the county; complete additional sewer extension projects; improve the economic wellbeing of communities; and provide an opportunity to consolidate and streamline the county's existing sewer district system and normalize the inequitable rate structure that has long existed.

In addition, this act will extend the existing one-quarter of one percent sales tax utilized to finance the county drinking water protection program until 2060. **Twenty-five percent of such tax is apportioned for sewer taxpayer protection. Beginning with the first fiscal year after the adoption of the water quality restoration fund, a portion of the net collections of such tax apportioned for sewer taxpayer protection shall be transferred to the water quality restoration fund, established pursuant to subdivision 11 of section 256-b of the county law. Such revenues shall be dedicated solely to funding individual septic system projects as defined in such subdivision. In the first four years, the portion to be transferred from funds apportioned for sewer taxpayer protection to the water quality restoration fund shall be five percent. In year five, the portion to be transferred from funds apportioned for sewer tax payer protection to the water quality restoration fund shall be twenty percent. The amount to be transferred shall**

be thirty percent in year six, forty percent in year seven, fifty percent in year eight, and seventy percent in years nine and ten. The portion transferred to the fund shall be fifty percent in all years thereafter.

§ 2. Subdivision 11 of section 256-b of the county law, as added by section 3 of part TT of chapter 58 of the laws of 2023, is amended to read as follows:

11. Water quality restoration fund. (a) Notwithstanding any provision of law to the contrary, the county of Suffolk shall deposit the net collections from the sales and compensating use tax authorized by section one thousand two hundred ten-F of the tax law into the Suffolk county water quality restoration fund established in accordance therewith, and shall utilize all monies transferred from the fund consistent with this section. 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 section and to repay any indebtedness or obligations incurred pursuant to the local finance law for the purposes authorized pursuant to this section.

(b) (i) Water quality improvement projects shall be eligible for funding pursuant to this section. For purposes of this section, "water quality improvement projects" shall mean: (A) the planning, design, construction, acquisition, enlargement, extension, or alteration of a county, town or village wastewater treatment facility, including individual hookups, and projects for the reuse of treated effluent from such wastewater treatment facilities, or (B) 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. In the case of individual septic system projects, the funding of the operation and maintenance of such projects shall be included in the definition of "water quality improvement projects". Such projects shall have as their purpose the remediation of existing water quality to meet specific water quality standards consistent with the SWP. Projects consistent with or listed in the SWP that are part of a plan adopted by a local government resulting in a net nitrogen reduction shall be eligible for consideration by the board of trustees, established in accordance with subparagraph (i) of paragraph (c) of this subdivision.

(ii) Of the annual collections [~~of the fund~~] from the tax imposed pursuant to section one thousand two hundred ten-F of the tax law,

administration of the county wastewater management district shall not exceed ten percent. [~~Not less than seventy-five~~] **The cost of preparation of an annual SWP implementation action plan to protect, preserve, and rehabilitate groundwater, surface water, and drinking water shall be included as part of such administrative costs. After first deducting such administrative costs, fifty** percent of the [~~remaining annual funds after administration~~] **net revenue from such tax** shall be used toward funding individual septic [~~systems~~] **system** projects **and fifty percent of the net revenue from such tax shall be used for funding projects related to wastewater treatment facilities**. [~~In addition to water quality improvement projects, other eligible expenditures from the fund shall include the preparation of an annual SWP implementation action plan to protect, preserve, and rehabilitate groundwater, surface water, and drinking water~~] **All revenue transferred to the water quality restoration fund from the tax imposed pursuant to section one thousand two hundred ten-A of the tax law, as required by paragraph (iv) of subdivision (d) of such section, shall be used solely to fund individual septic system projects**.

(iii) Other than for the payment of indebtedness or obligations incurred as set forth in paragraph (a) of this subdivision, and except for the preparation of the SWP implementation plan itself, no monies may be expended until the SWP implementation plan has been prepared and approved as provided for in this section.

(iv) Any expenditure from the fund for a purpose other than that expressly permitted, herein, shall be prohibited.

(c) (i) Within the local law, ordinance or resolution establishing the Suffolk county water quality restoration fund, [~~pursuant to section one thousand two hundred ten-F of the tax law,~~] the county shall establish a board of trustees of twenty-one members to prepare, review and approve the SWP implementation plan for submission to the county executive and county legislature and shall specify the powers and duties of the board of trustees, including the procedures for appointment of a chairperson. Such approval shall be in addition to all other approvals required by law. The board of trustees shall consist of: (A) a representative from the department of environmental conservation; (B) a representative from the East End supervisors and mayors association; (C) a representative of the Suffolk town supervisors association; (D) a representative of the Suffolk County Village Officials Association; (E) a town representative from the State Central Pine Barrens Joint Planning and Policy Commission to be designated by the commission; (F) a municipal representative from the Peconic Estuary Partnership; (G) a municipal representative from the State South Shore Estuary Reserve; (H) a municipal representative from the Long Island Sound Estuary; (I) a representative of the Long Island Federation of Labor; (J) a representative of Building and Construction Trades Council of Nassau & Suffolk counties; (K) a representative from a regional environmental organization; (L) the chair of the Suffolk county planning commission; (M) the county executive or designee; (N) the presiding officer of the county legislature or designee; (O) the minority leader of the county legislature or designee; (P) the county department of public works commissioner or designee; (Q) the county department of health services commissioner or designee; (R) a representative from a regional economic development organization; (S) a representative from the liquid waste industry; (T) a representative from the Suffolk County Alliance of Chambers, Inc.; and (U) a representative from the Long Island Contractors Association.

(ii) The powers and duties of the board of trustees shall [~~oversee~~] **include overseeing** the annual audit pursuant to paragraph (e) of this subdivision, making prudent recommendations for resource allocations for county-approved alternative wastewater treatment technologies not contemplated in the Suffolk county subwatersheds wastewater plan and long-term progress monitoring of the implementation of the Suffolk county subwatersheds wastewater plan regarding achievements of nitrogen load reductions and ecological endpoints.

(d) Annual SWP implementation plan. The board of trustees shall prepare, review and approve and submit to the county executive the SWP implementation plan within one year of the effective date of this section, and in every five years thereafter in a like manner. The board of trustees shall conduct a public hearing on said 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. Funds may only be expended pursuant to this section for projects which have been included in said plan. Said plan shall be consistent with state, federal, county, and local government land use and wastewater management plans. After submission and approval by the county executive, such plan shall be submitted to the county legislature. Upon review, the county legislature shall determine, by local law, whether to approve the proposed plan, if the plan is denied, the plan shall be remanded to the board of trustees for further study. Such plan shall not become effective until approved by local law. Projects may be added or removed from the currently effective SWP implementation plan in a like manner.

(e) 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~~] **Such** 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 section 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.

(f) Annual report. In addition to any other report required by this section, the board of trustees, through its chairperson, shall deliver annually a report to the county legislature. Such report shall be presented by May fifteenth of each year. The report shall describe in detail the projects undertaken, the monies expended, and the administrative activities of the water quality fund and district established in accordance with this section, during the prior year. At the conclusion of the report, the chairperson of the board of trustees shall be prepared to answer the questions of the county legislature with respect to the projects undertaken, the monies expended, and the administrative activities during the past year. **Any costs associated with preparing the annual report shall be a charge to the fund.**

§ 3. Subdivision (d) of section 1210-A of the tax law, as amended by section 4-a of part TT of chapter 58 of the laws of 2023, is amended to read as follows:

(d) Notwithstanding any other provision of this article to the contrary, the net collections from the tax imposed pursuant to subdivision (a) of this section for the period beginning December first, nineteen hundred eighty-eight and ending November thirtieth, two thousand sixty shall, upon payment to the county of Suffolk, be deposited in a special fund, to be designated as a drinking water protection reserve fund, to be created by said county therefor separate and apart from any other funds and accounts of the county. Moneys in such fund shall be deposited in one or more of the banks or trust companies designated, in the manner provided by law, as a depository of the funds of such county. Pending expenditure from such fund, moneys therein may be invested in the manner provided in section eleven of the general municipal law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund. Moneys in said fund may be appropriated from and transferred to or expended in any fiscal year only for the purposes of making payments pursuant to subdivisions (b) and (c) of this section for the period beginning December first, nineteen hundred eighty-eight, to the extent that moneys in said fund are remaining, and if authorized by local law, for the following purposes:

(i) for the purposes of specific environmental protection (acquisition of: farmland development rights; open space, wetlands, woodlands, pine barrens and other lands for passive recreational uses; lands for hamlet greens, hamlet parks, pocket parks, historic parks, cultural parks and other lands for active/parkland recreational uses; lands necessary for maintaining and protecting the quality of surface water, groundwater and coastal resources);

(ii) for a water quality protection and restoration program or programs and land stewardship initiatives;

(iii) for the purposes of county-wide property tax protection; and

(iv) for the purpose of sewer taxpayer protection **(25% of the net collections from the tax). Beginning with the first fiscal year after the adoption of the water quality restoration fund, a portion of the net collections of such tax apportioned for this purpose as provided for herein, shall be transferred to the water quality restoration fund, established pursuant to subdivision eleven of section two hundred fifty-six-b of the county law. Said revenues shall be dedicated solely to funding individual septic system projects as defined in such subdivision. The portion of net collections of the tax transferred to the water quality restoration fund each year shall be as follows:**

Year	Percentage
1	5%
2	5%
3	5%
4	5%
5	20%
6	30%
7	40%
8	50%
9	70%
10	70%

For all subsequent years, the portion of net collections transferred to the water quality restoration fund shall be fifty percent.

Notwithstanding any special or local law, resolution or charter provision to the contrary, moneys in said fund which have not been appropriated from and transferred to or expended in any fiscal year for the purposes of making payments pursuant to subdivisions (b) and (c) of this section, may alternatively be appropriated for the purposes of paying debt service on any new indebtedness incurred after the effective date of the chapter of the laws of two thousand one that enacted this paragraph pursuant to the local finance law in order to effectuate the purposes described in paragraph (i) or (ii) of this subdivision. For the purpose of allocating moneys in said fund pursuant to local law among the purposes described in paragraphs (i), (ii), (iii) and (iv) of this subdivision, moneys applied to the payment of debt service under the authority of the previous sentence shall be considered by said county to have been expended for the purposes for which such indebtedness was incurred.

§ 4. After January 1, 2030, the Suffolk county executive shall prepare a report to be submitted to the governor and the legislature. Such report shall make recommendations regarding any modifications to this act, if any, with regard to the future distribution of revenue for water quality improvement projects based upon the future demand for funding for wastewater treatment projects and individual septic system projects.

§ 5. This act shall take effect immediately.