STATE OF NEW YORK

9366

IN ASSEMBLY

March 6, 2024

Introduced by M. of A. KELLES -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to environmental restoration projects; 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:

Section 1. Section 56-0501 of the environmental conservation law is amended by adding a new subdivision 3 to read as follows:

3. Beginning in state fiscal year two thousand twenty-four--two thousand twenty-five, environmental restoration projects may be funded within available appropriations.

§ 2. Subdivision 1 of section 56-0502 of the environmental conservation law is REPEALED.

§ 3. Subdivisions 1-a and 5 of section 56-0502 of the environmental conservation law, subdivision 1-a as added and subdivision 5 as amended by section 2 of part D of chapter 577 of the laws of 2004, are amended and a new subdivision 1 is added to read as follows:

1. "Contaminant" shall mean hazardous waste as defined in section 27-1301 of this chapter, petroleum as defined in section one hundred seventy-two of the navigation law, and emerging contaminants as defined in section eleven hundred twelve of the public health law.

1-a. "Contamination" or "contaminated" shall [~~have the same meaning as provided in section 27-1405 of this chapter~~] **mean the presence of a contaminant in any environmental media, including soil, surface water, groundwater, air, or indoor air**.

5. "Municipality", for purposes of this title, shall have the same meaning as provided in subdivision fifteen of section 56-0101 of this article, except that such term shall not refer to a municipality that [~~generated, transported, or disposed of, arranged for, or that caused the generation, transportation, or disposal of contamination located at real property proposed to be investigated or to be remediated under an environmental restoration project. For purposes of this title, the term municipality includes a municipality acting in partnership with a commu-~~

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

LBD14201-01-4

~~nity based organization~~], **, through deliberate action or inaction, intentionally or recklessly caused or contributed to contamination, outside of its performance of governmental functions, which threatens public health or the environment, at real property to be investigated or remediated under an environmental restoration project**.

§ 4. Paragraph (c) of subdivision 2 of section 56-0503 of the environmental conservation law, as amended by section 38 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

(c) A provision that the municipality shall assist in identifying a responsible party by searching local records, including property tax rolls, or document reviews, and if, in accordance with the required departmental approval of any settlement with a responsible party, any responsible party payments become available to the municipality, before, during or after the completion of an environmental restoration project, which were not included when the state share was calculated pursuant to this section, [~~the state assistance share shall be recalculated, and~~] **the value of such settlement shall be used by the municipality to fund its municipal share, and the state assistance share shall not be recalculated, to the extent that the total of all such settlement amounts is equal to or less than the municipal share. To the extent the total of all such settlement amounts exceeds the municipal share,** the municipality shall pay **such exceedance** to the state, for deposit into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law[~~, the difference between the original state assistance payment and the recalculated state share. Recalculation of the state share shall be done each time a payment from a responsible party is received by the municipality~~];

§ 5. Paragraphs (a), (d), and (e) of subdivision 1 of section 56-0505 of the environmental conservation law, as amended by section 5 of part D of chapter 1 of the laws of 2003, are amended and two new paragraphs (f) and (g) are added to read as follows:

(a) the benefit to the environment **and public health** realized by the expeditious remediation of the property proposed to be subject to such project;

(d) real property in a designated brownfield opportunity area pursuant to section nine hundred seventy-r of the general municipal law **or real property in a disadvantaged community pursuant to subdivision five of section 75-0101 of this chapter**; [~~and~~]

(e) the opportunity for other funding sources to be available for the **investigation or** remediation of such property, including, but not limited to, enforcement actions against responsible parties (other than the municipality to which state assistance was provided under this title; or a successor in title, lender, or lessee who was not otherwise a responsible party prior to such municipality taking title to the property), state assistance payments pursuant to title thirteen of article twenty-seven of this chapter, and the existence of private parties willing to remediate such property using private funding sources. Highest priority shall be granted to projects for which other such funding sources are not available[~~.~~], **, excluding state or federal funds for the investigation or remediation project received or to be received by the municipality;**

(f) for drinking water contamination sites as defined in section 27-1201 of this chapter, any requirements made by the commissioner of health pursuant to section 27-1205 of this chapter, for a municipally owned public water system to take action to reduce exposure to an emerging contaminant or contaminants; and

(g) any such other criteria deemed appropriate by the department.

§ 6. Subdivision 2 of section 56-0505 of the environmental conservation law is REPEALED.

§ 7. Subdivisions 3, 4, and 5 of section 56-0505 of the environmental conservation law are renumbered subdivisions 2, 3, and 4 and subdivision 2, as amended by section 5 of part D of chapter 1 of the laws of 2003 and as renumbered by this section, is amended to read as follows:

2. The remediation objective of an environmental restoration remediation project shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to [~~section~~] sections 27-1313 and 27-1205 of this chapter.

§ 8. Subdivision 3 of section 56-0509 of the environmental conservation law, as amended by section 4 of part D of chapter 577 of the laws of 2004, is amended to read as follows:

3. The state shall indemnify and save harmless any municipality[~~,~~] that completes an environmental restoration remediation project in compliance with the terms and conditions of a state assistance contract or written agreement pursuant to subdivision three of section 56-0503 of this title providing such assistance and any successor in title, lessee, or lender [~~identified in paragraph (a) of subdivision one of this section in the amount of any judgment or settlement, obtained against such municipality, successor in title, lessee, or lender in any court for any common law cause of action arising out of the presence of any contamination in or on property at anytime before the effective date of a contract entered into pursuant to this title~~] for judgments or settlements obtained against such municipality, successor in title, lessee, or lender in any court for any common law cause of action arising out of municipal actions related to the implementation of the environmental restoration remediation project. Such municipality, successor in title, lessee, or lender shall be entitled to representation by the attorney general, unless the attorney general determines, or a court of competent jurisdiction determines, that such representation would constitute a conflict of interest, in which case the attorney general shall certify to the comptroller that such party is entitled to private counsel of its choice, and reasonable attorneys' fees and expenses shall be reimbursed by the state. Any settlement of such an action shall be subject to the approval of the attorney general as to form and amount, and this subdivision shall not apply to any settlement of any such action which has not received such approval.

§ 9. Notwithstanding subdivisions a, b, and c of section 32 of chapter 413 of the laws of 1996, a memorandum of understanding shall not be required to make available twenty million dollars ($20,000,000) from the Clean Water/Clean Air Bond Act of 1996 for state assistance payments to municipalities for environmental remediation in accordance with title 5 of article 56 of the environmental conservation law.

§ 10. This act shall take effect immediately.