STATE OF NEW YORK

238--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Legislative findings and intent. The legislature hereby finds that:

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.

§ 3. 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

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

LBD00610-03-3

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.

§ 4. Subdivisions 13 and 16 of section 15-1502 of the environmental conservation law, as added by chapter 401 of the laws of 2011, are amended and fifteen new subdivisions 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 are added to read as follows:

13. "Public water supply system" shall mean a permanently installed water withdrawal system including its source, collection, pumping, treatment, transmission, storage and distribution facilities used in connection with such system, which provides piped potable water to the public for potable purposes, if such system has at least five service connections used by year-round residents, a system that consists solely of customer site piping.

16. "Withdrawal" or "withdrawal of water" shall mean the removal or taking of water for any purpose from the waters of the state, including surface water or ground water.

17. "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.

18. "Applicant" means a person, corporation, or other organization or entity applying for a license under this section for the sale of bottled water.

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

20. "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.

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

22. "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.

23. "Permittee" means the holder of a license under section 15-1503 of this title.

24. "Royalty fee" means compensation to the state for the authorization of a permit 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 subdivision two-a of section 15-1503 of this title.

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

26. "Sale of bottled water" means water withdrawn from a water source or public water supply system 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.

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

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

29. "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.

30. "Waters of the state" means 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 water supply systems. Waters of the state shall not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

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

§ 5. Section 15-1503 of the environmental conservation law is amended by adding a new subdivision 2-a to read as follows:

2-a. Where an applicant for a permit under this section is seeking such permit for the purposes of withdrawing, taking, removing, diverting, and/or transferring from the waters of the state for the sale of bottled water the provisions of this subdivision shall apply.

a. The department shall not issue a permit pursuant to this section to a person or entity who proposes to engage in the sale of bottled water unless all of the following conditions are met:

i. Before issuance of such permit, the department shall provide written notice of the application for such permit with conditions and proposed royalty fees as provided in paragraph b of this subdivision, at least sixty days prior to such approval: to any local unit of government, any public water supply system 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 subparagraph. Such public notice shall provide at least a forty-five day comment period before issuance of the permit. 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 issuance of the permit.

ii. Before approval and issuance of the permit, the department shall evaluate, assure, and duly establish that all of the following are met:

(A) The applicant has complied with the provisions of this section;

(B) The applicant has shown, based on clause (A) of this subparagraph 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 subparagraph i of this paragraph, that the diversion, 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;

(C) The applicant has complied with the application and royalty fees required by paragraph b of this subdivision;

(D) Any conditions the department shall have required as a condition for issuance of the permit 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.

b. i. Before processing an application for a permit under this section for the purposes of withdrawing, taking, removing, diverting, and/or transferring from the waters of the state for the sale of bottled water, 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 such application.

ii. A permittee shall pay a royalty fee for the right to divert, withdraw, remove and/or transfer the sovereign waters of the state or public water supply system for purposes of the sale of bottled water in accordance with the following:

(A) The permittee 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 paragraph a of this subdivision, 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.

(B) The permittee shall file on the first day of each month, beginning thirty days after the date of the issuance of the permit, a written summary and report, with supporting data and information, the total volume of water withdrawn. The permittee shall pay the royalty fee required by clause (A) of this subparagraph 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 permit. 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.

iii. The department shall deposit the royalty fee collected from each permittee pursuant to subparagraph ii of this paragraph into the public water justice fund in accordance with all applicable laws and regulations.

iv. The department's expenses, including all reasonable expenses related to collection and management of fees under this subdivision, 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 subdivision or the issuance of the first permit under this subdivision, whichever occurs first.

v. Where the water is from a water source that is from the waters of the state, the net proceeds from each permittee shall be deposited in the public water justice fund.

vi. Where the water is from a public water supply system or waterworks, which withdraws and distributes the waters of the state as a public service within its lawful territory, the net proceeds from each permittee shall be deposited in the public water justice fund, and 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 public water supply systems, from which the water is withdrawn, taken, diverted and/or transferred for the purpose of the sale of bottled water.

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

c. i. In addition to all other requirements of this section, 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 permittee and determined by the department that:

(A) 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

(B) based on the actual data and information established under clause (A) of this subparagraph, 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.

ii. Any decision or determination required by this subdivision 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.

§ 6. The environmental conservation law is amended by adding a new section 15-1508 to read as follows:

§ 15-1508. Use of public water justice funds.

The department shall direct the administration of the public water justice fund in accordance with the provisions of subparagraph vi of paragraph b of subdivision two-a of section 15-1503 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 public water authorities in the state including local water districts and water agencies, as well as environmental justice groups and other environmental justice experts as determined appropriate by the department.

§ 7. 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 subdivision two-a of section 15-1503 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 public water supply system 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 fifteen of article fifteen of the environmental conservation law and any rules or regulations promulgated thereto; except that there shall be a preference for at least thirty-five percent of the funds to be distributed to disadvantaged communities.

§ 8. 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.