

# STATE OF NEW YORK

8867--A

## IN ASSEMBLY

January 23, 2024

Introduced by M. of A. KELLES, GUNTHER, FAHY, GONZALEZ-ROJAS, McMAHON, BURDICK, SHIMSKY, THIELE, OTIS, SHRESTHA, L. ROSENTHAL, SLATER -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- 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 enacting the "harmful algal bloom monitoring and prevention act"

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "harmful algal bloom monitoring and prevention act".  
3 § 2. Legislative findings and declarations. The legislature finds that  
4 the state of New York has a responsibility to maintain the health and  
5 safety of its abundant clean water resources, upon which the residents  
6 of New York state, as well as its many visitors, rely on for drinking,  
7 agriculture, tourism, recreation, and their livelihoods. Because the  
8 waters of the state are under threat by harmful algal blooms (HABS),  
9 which are known to be toxic and even fatal to humans, pets, and wild-  
10 life, the state has a responsibility to provide coordinated, statewide  
11 monitoring, evaluation, prevention and mitigation, going beyond water  
12 body-specific data collection and isolated mitigation efforts. While the  
13 causes of HABS are complex and varied, with a coordinated and standard-  
14 ized approach to monitoring and evaluation, patterns can more readily be  
15 identified to isolate the combination of relevant causes specific to  
16 different bodies of water across the state and determine the most effec-  
17 tive targeted interventions. To address this threat, the state must  
18 develop and maintain a comprehensive state clearinghouse to bring  
19 together existing and new available statewide cross-sectional and longi-  
20 tudinal data and information on harmful algal blooms, potential and  
21 known causes, best practice interventions, expertise, and funding  
22 resources. This data and subsequent report will enable the state to

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

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1 effectively and efficiently administer a central grant program support-  
2 ing data-driven best practices in prevention and mitigation of harmful  
3 algal blooms.

4 § 3. The environmental conservation law is amended by adding a new  
5 section 15-0519 to read as follows:

6 § 15-0519. Harmful algal bloom monitoring and prevention program.

7 1. Definitions. For the purposes of this section, the following terms  
8 shall have the following meanings:

9 a. "Harmful algal blooms" shall mean growths of blooms of algal  
10 species present in fresh or salt water that can produce toxins that are  
11 harmful to public health, the economy, or recreational enjoyment, or  
12 that can impair water quality and the natural ecology therein.

13 b. "Municipality" shall mean a county, city, town, or village.

14 c. "Waters of the state" means all waterways, or bodies of water  
15 located within New York state or that part of any body of water which is  
16 adjacent to New York state over which the state has territorial juris-  
17 isdiction.

18 2. Comprehensive statewide data collection consolidation and analysis;  
19 report. a. The commissioner shall develop a program to further the  
20 comprehensive and consistent collection, consolidation, analysis and  
21 meta-analysis of statewide data relating to the monitoring, evaluation,  
22 prevention, and mitigation of harmful algal bloom outbreaks. The commis-  
23 sioner shall provide guidelines for the submission of existing and  
24 historical harmful algal bloom monitoring, evaluation, mitigation, and  
25 prevention data and strategies from relevant institutions, organiza-  
26 tions, and individuals with experience in peer-reviewed research, grant-  
27 making, or other like activities in the area of water quality relating  
28 to the monitoring, evaluation, prevention, and mitigation of harmful  
29 algal bloom outbreaks, including but not limited to research programs,  
30 clinics, labs, and project management.

31 b. The data collected, consolidated, and analyzed shall consist of  
32 elements including but not limited to longitudinal data on the incidence  
33 of harmful algal blooms, contextual factors thought to be associated  
34 with the incidence of harmful algal blooms such as water temperature,  
35 turbidity, flow rate, salinity, nutrient levels for phosphorus and  
36 nitrogen, acidity (pH), dissolved oxygen levels, monitoring and evalu-  
37 ation of waters of the state that do not contain harmful algal blooms,  
38 and results of harmful algal bloom interventions in New York state.

39 c. The data collected, consolidated, and analyzed shall meet a stand-  
40 ard that is consistent with the practices and expertise of institutions,  
41 organizations, or individuals with experience in peer-reviewed research,  
42 grantmaking, or other like activities in the area of water quality  
43 relating to the monitoring, evaluation, prevention, and mitigation of  
44 harmful algal bloom outbreaks, including but not limited to research  
45 programs, clinics, labs, and project management.

46 d. The department shall annually publish and update a list of vetted  
47 best practice strategies for harmful algal bloom monitoring, evaluation,  
48 prevention, and mitigation, which shall be differentiated by region or  
49 water body with unique confirmed causal pathways for the related harmful  
50 algal bloom outbreak trends. Such strategies shall be supported by find-  
51 ings of the harmful algal bloom database created pursuant to subdivision  
52 three of this section, as well as external evaluation, including but not  
53 limited to strategies approved by the federal environmental protection  
54 agency, certification that such strategies meet or exceed the American  
55 National Standards for health effects of drinking water treatment chemi-  
56 cals (NSF/ANSI/CAN-60), or testing for efficacy by center of excellence

1 in healthy water solutions. The department shall publish such list and  
2 findings supporting the strategies on such list on the department's  
3 website.

4 e. No later than five years after the effective date of this section,  
5 the commissioner, in consultation with the commissioner of agriculture  
6 and markets, shall prepare a report providing comprehensive analysis and  
7 meta-analysis of the data collected pursuant to this section, including  
8 findings and recommendations for establishing, maintaining, and improv-  
9 ing upon a coordinated system of monitoring, evaluation, prevention, and  
10 mitigation of harmful algal bloom outbreaks across New York state. The  
11 department shall:

12 i. update the report at least once every five years after the initial  
13 completion of the report;

14 ii. make the report publicly available on the department's website;

15 iii. hold at least six regional public comment hearings on the draft  
16 report and subsequent updates to the report, including three meetings in  
17 the upstate region and three meetings in the downstate region, and shall  
18 allow at least one hundred twenty days for the submission of public  
19 comment;

20 iv. provide meaningful opportunities for public comment from all  
21 segments of the populations that live near, or are reliant upon for  
22 drinking, recreation, or economic activity, the waters of the state  
23 included in the report;

24 v. seek out input from institutions or organizations with relevant  
25 expertise, citizen scientists, and labs testing water quality in  
26 relation to harmful algal blooms;

27 vi. identify the magnitude of harmful algal blooms across the state  
28 and make recommendations on regulatory measures and other state or local  
29 actions to monitor, evaluate, prevent, or mitigate harmful algal blooms,  
30 including existing opportunities for coordination of federal, state,  
31 municipal, and non-governmental organizations;

32 vii. identify best practices, technology, and available federal,  
33 state, municipal, or private funding for and existing efforts in moni-  
34 toring, evaluating, preventing, and mitigating harmful algal blooms; and

35 viii. identify the current need in specific bodies of water for the  
36 establishment of programs or organizations to further the monitoring,  
37 evaluation, prevention, and mitigation of harmful algal blooms, and the  
38 costs therefor.

39 3. Harmful algal bloom database. a. The commissioner shall establish  
40 and maintain a website providing public access to a harmful algal bloom  
41 database which shall contain all relevant data, research, and reporting  
42 required pursuant to subdivision two of this section.

43 b. Such database, and analysis of the comprehensive statewide data  
44 therein, shall support the coordination of efforts across the state to  
45 monitor, evaluate, prevent, and mitigate harmful algal blooms, and shall  
46 include, but not be limited to:

47 i. the geolocation of harmful algal bloom outbreaks, and efforts to  
48 monitor, evaluate, prevent, and mitigate such outbreaks;

49 ii. existing research, analysis, or reports relating to outbreaks of  
50 harmful algal blooms in the waters of the state and the causes of such  
51 outbreaks;

52 iii. known or developing strategies and best practices of state,  
53 municipal, and non-governmental organizations that monitor, evaluate,  
54 prevent, or mitigate harmful algal bloom outbreaks, the respective  
55 waters of the state in which such strategies and best practices have  
56 been conducted, and the geolocations of such waters;

1 iv. available sources of financing for algal bloom monitoring, evalu-  
2 ation, prevention, and mitigation, including federal, state, municipal,  
3 and/or private funding, grants, or other monies; and

4 v. information on institutions with expertise in peer-reviewed grant-  
5 making and research in the area of water quality and/or harmful algal  
6 blooms, including but not limited to the New York sea grant at Stony  
7 Brook University, the New York water resource institute at Cornell  
8 University, the center of excellence in healthy water solutions, the  
9 bureau of water supply protection, the New York city department of envi-  
10 ronmental protection, the department of agriculture and markets, commu-  
11 nity-based nonprofit organizations with missions that specifically  
12 involve monitoring, evaluating, mitigating, or preventing harmful algal  
13 blooms, and any other institution or organization providing data  
14 compiled pursuant to this section, and the contact information, relevant  
15 research programs, clinics, labs, staff, and published research of such  
16 institutions.

17 4. Rules and regulations. The commissioner shall, in a manner which is  
18 coordinated with and supports efforts by federal, state, municipal, and  
19 non-governmental organizations, promulgate rules and regulations to:

20 a. limit and eliminate the causes of harmful algal bloom outbreaks;  
21 and

22 b. monitor and mitigate harmful algal bloom outbreaks.

23 5. Program development. The commissioner shall establish and support  
24 new and existing programs and organizations relevant to the health of  
25 waters of the state that have not implemented strategies to monitor,  
26 evaluate, prevent, or mitigate harmful algal bloom outbreaks.

27 6. Harmful algal bloom grant program. In addition to the financing to  
28 be identified pursuant to subparagraph iv of paragraph b of subdivision  
29 three of this section:

30 a. The commissioner, in consultation with the commissioner of agricul-  
31 ture and markets, the commissioner of health, and the president of the  
32 empire state development corporation, shall establish a harmful algal  
33 bloom grant program which shall provide funding to municipalities,  
34 intermunicipal organizations, community-based nonprofits, or academic  
35 institutions for the deployment of harmful algal bloom monitoring, eval-  
36 uation, prevention, and mitigation strategies and best practices.

37 b. The program shall require that applicants for the harmful algal  
38 bloom grant program conduct and submit a study, as part of their appli-  
39 cation, assessing the most appropriate mitigation and prevention strate-  
40 gies for relevant waters of the state and best practices therefor, as  
41 informed by the harmful algal bloom database created pursuant to subdivi-  
42 vision three of this section.

43 c. In determining which applicants shall be awarded grants pursuant to  
44 this subdivision, first preference shall be given to applicants who  
45 propose strategies that incorporate principles of least harm and great-  
46 est safety to applicators, the public, and the environment, and utilize  
47 passive or non-chemical physical controls, including but not limited to:

48 i. aeration;

49 ii. hydrological manipulations;

50 iii. mechanical mixing;

51 iv. reservoir drawdown or desiccation;

52 v. surface skimming;

53 vi. ultrasound; or

54 vii. other emerging technologies, as approved by the department.

55 d. In determining which applicants shall be awarded grants pursuant to  
56 this subdivision, second preference shall be given to applicants who

1 demonstrate expertise with previous experience treating water bodies in  
2 the United States larger than one thousand acres, with proven success  
3 using accepted strategies, including but not limited to strategies that:

4 i. are aimed at reducing cyanotoxins in the water to less than harmful  
5 levels;

6 ii. employ ready-to-use technology that is means tested, reproducible,  
7 and generalizable, without limitation of size or shape of the water  
8 body;

9 iii. employ technology which allows for application under emergency  
10 situations and within less than ninety-six hours from approval;

11 iv. utilize products that are modular and can be used as a preventa-  
12 tive measure;

13 v. utilize products that are quick and easy to apply and are generally  
14 recognized as safe to the applicator, public, and environment;

15 vi. utilize products that float on the surface of the water and do not  
16 sink immediately to the bottom of the water column;

17 vii. utilize products that are distributed autonomously across the  
18 water body after a localized application;

19 viii. utilize products with a time-release mechanism that applies  
20 constant and prolonged oxidative stress of the cyanobacteria triggered  
21 by the programmed cell death signaling cascade, resulting in their  
22 collapse; and

23 ix. utilize products manufactured in the United States.

24 e. The commissioner shall make monies available from the harmful algal  
25 bloom monitoring and prevention fund, as established pursuant to section  
26 ninety-nine-ss of the state finance law, within amounts appropriated  
27 therefor, pursuant to this section.

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

30 § 99-ss. Harmful algal bloom monitoring and prevention fund. 1. There  
31 is hereby established in the joint custody of the state comptroller and  
32 commissioner of taxation and finance a special fund to be known as the  
33 "harmful algal bloom monitoring and prevention fund".

34 2. Such fund shall consist of all revenues received by the comptroller  
35 and all other moneys appropriated, credited, or transferred thereto from  
36 the general fund or any other fund or source pursuant to law. Nothing  
37 contained in this section shall prevent the state from receiving grants,  
38 gifts, or bequests for the purposes of such fund and depositing them  
39 into such fund according to law.

40 3. Moneys shall be paid out of the fund on the audit and warrant of  
41 the comptroller on vouchers certified or approved by the commissioner of  
42 environmental conservation or his or her designee.

43 4. Moneys of the fund shall be available to the commissioner of envi-  
44 ronmental conservation for the harmful algal bloom monitoring and  
45 prevention program established pursuant to section 15-0519 of the envi-  
46 ronmental conservation law.

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