STATE OF NEW YORK

10181

IN SENATE

May 4, 2026

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT establishing the Birch Hill - Highview Water District in the town of Southeast, Putnam County

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

Section 1. Legislative findings. It is hereby found and determined that the town of Southeast, Putnam County, hereinafter known as the town, spent general fund money in the amount of $348,544.39 to make improvements to the water system, part of which had been owned and operated by the Birch Hill Water Company and part of which had been a shared water system serving multiple individual homeowners prior to the establishment of the Birch Hill - Highview Water District in accordance with the provisions of Article 12-A of the town law. In 2015, the town spent general fund money in the amount of $268,906.32 for the construction and repair of existing water well(s), improvements to the pump house(s) and for the repair and replacement of distribution facilities. It was later determined that the wells serving the water system contained higher than acceptable levels of carcinogenic chemicals such as perfluorooctanoic acid and related compounds, known generally as PFOA, which requires remediation. In the years that followed, the town spent additional general fund money in the amount $79,638.07 for the design and approval of systems to remediate the water quality in the affected wells together with additional repairs and replacement of supply and distribution facilities of the water district. The expenditure of such funds by the town board prior to the district's establishment as described above was in violation of the provisions of section 165.10 of the local finance law. Further, the town failed to repay the moneys advanced from the general fund to make improvements to the former water system by the close of the fiscal year in which the advance was made with reasonable interest in accordance with section 9-a of the general municipal law.

Lastly, bond resolutions were not adopted by the town board at the times such funds were paid and, as a result, the town is prohibited from financing such costs with bonds or notes. The specific actions taken by the town in furtherance of establishment of the Birch Hill - Highview Water District and the construction and financing of improvements therein are more fully described as follows:

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

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Upon the death of the owner of the Birch Hill Water Company, the water system fell into disrepair. The estate of the owner of the Birch Hill Water Company made attempts to obtain approval of rate increases from the public service commission to help fund the ongoing maintenance and repair of the water system, which attempts were unsuccessful. Ultimately, the estate conveyed title to the water system to the town for nominal consideration and the town assumed operation of the water system and commenced proceedings to establish a water district. Before the proceedings to establish the water district could be concluded, the Putnam County department of health, in determining what improvements needed to be made to the water district, identified an unregulated water system located adjacent to the proposed water district which served multiple residences with water sourced from a common well. The health department directed the town to incorporate the residences served by the common well into the water district being formed. Whereupon the town recommenced proceedings to establish the water district. In or about 2014, the town's engineer prepared a new map, plan and report to incorporate the additional residential lots as benefitted properties within the Birch Hill - Highview Water District, obtained easements to install and repair water distribution lines and made necessary repairs and installations to the existing water supply and distribution facilities. On October 23, 2014, the town board held a public hearing with respect to the formation of the Birch Hill - Highview Water District and adopted an order establishing the Birch Hill-Highview Water District on November 6, 2014. The town filed said order with the county clerk; however, the town board did not obtain the permission of the state comptroller for the establishment of the district as required by section 209-f of the town law.

Before the town could obtain permission from the state comptroller for the establishment of the Birch Hill - Highview Water District, it became apparent that the identification of emerging PFOA contamination of the water wells serving the water system and the associated need to design and construct an appropriate filtration system would necessitate amending or restating the map, plan and report forming the basis for the establishment of the water district. Moreover, it would entail seeking the additional ability to finance the extraordinary expenses associated with the necessary PFOA remediation measures. In 2023, the town's consulting engineer prepared a new map, plan and report for the Birch Hill - Highview Water District. On July 27, 2023, the town board held a public hearing with respect to the establishment of the Birch Hill - Highview Water District. On August 10, 2023, the town board adopted a public interest order subject to permissive referendum and such order was posted and published as required. No petition for referendum having been filed with the town clerk in a timely manner, the public interest order was thereafter filed with the county clerk. By verified application dated March 8, 2024, the town board sought permission of the state comptroller for the establishment of the Birch Hill - Highview Water District in the town. Due to the passage of time and other irregularities in the establishment of the water district, the state comptroller has opined that the formation of the proposed district would require a special act of the legislature.

The town has operated the Birch Hill - Highview Water District as a de facto water district in violation of the provision of articles 12 and 12-A of the town law since 2015. In addition to using general fund money to pay the cost of the initial improvements described herein, the town has spent general fund money to replace water mains on account of breaks

and other system improvements, including the design of necessary improvements to remediate well water contamination, all to provide for a properly functioning water system to serve 24 residences. The town has been assessing residents for Birch Hill - Highview Water District operation and maintenance costs in accordance with a budget adopted annually. As of December 31, 2025, the total amount of the initial payment by the town that remains outstanding is $348,544.39. The town has applied for and been approved to receive grants and loans to help offset the extraordinary expenses associated with the PFOA remediation, but such cannot be obtained without first having the water district properly established.

The failure of the town board to adopt a bond resolution prior to the expenditure of such moneys for the water system improvements was contrary to the provisions of section 165.10 of the local finance law.

§ 2. Water district established. Notwithstanding the defects described in section one of this act, the establishment of the Birch Hill - Highview Water District is hereby legalized, validated, ratified and confirmed. Said water district established pursuant to this act shall be funded, operated, expanded and otherwise controlled in accordance with the provisions of articles 12 and 12-A of the town law and the provisions of this act. To the extent that the provisions of this act shall in any way be in conflict with articles 12 and 12-A of the town law, the provisions of this act shall be controlling. The imposition of any special assessments by the town upon the properties previously served by the Birch Hill Water Company and the unincorporated users included within the water district are hereby validated.

§ 3. Bonds authorized. The town is authorized to issue bonds or notes in the principal amount of $348,544.39 on behalf of the Birch Hill - Highview Water District for the purpose of reimbursing the general fund of the town from which the moneys have been temporarily diverted since 2015 to pay certain of the costs incurred in the establishment and improvement of the water district acquired by the town in accordance with the mandate of the public service commission and the Putnam county health department, notwithstanding the provisions of section 165.10 of the local finance law which provides, in effect, that a bond resolution shall have first been adopted before any such temporary diversion of funds shall have been made and notwithstanding section 9-a of the general municipal law which requires money advanced to be repaid to the fund from which they were advanced not later than the close of the fiscal year in which the advance was made with reasonable interest. The period of probable usefulness for such improvements is forty (40) years from the date of initial improvements, which occurred in 2015. In anticipation of such bonds, bond anticipation notes are hereby authorized.

§ 4. Obligations. Except as otherwise provided herein, any obligations issued pursuant to this act shall be issued in accordance with the local finance law.

§ 5. Severability. If any clause, sentence, subdivision, paragraph, section, or part of this act will be adjudged by any court of competent jurisdiction to be invalid, judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect immediately.