

# STATE OF NEW YORK

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10181

## IN SENATE

May 4, 2026

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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:

1 Section 1. Legislative findings. It is hereby found and determined  
2 that the town of Southeast, Putnam County, hereinafter known as the  
3 town, spent general fund money in the amount of \$348,544.39 to make  
4 improvements to the water system, part of which had been owned and oper-  
5 ated by the Birch Hill Water Company and part of which had been a shared  
6 water system serving multiple individual homeowners prior to the estab-  
7 lishment of the Birch Hill - Highview Water District in accordance with  
8 the provisions of Article 12-A of the town law. In 2015, the town spent  
9 general fund money in the amount of \$268,906.32 for the construction and  
10 repair of existing water well(s), improvements to the pump house(s) and  
11 for the repair and replacement of distribution facilities. It was later  
12 determined that the wells serving the water system contained higher than  
13 acceptable levels of carcinogenic chemicals such as perfluorooctanoic  
14 acid and related compounds, known generally as PFOA, which requires  
15 remediation. In the years that followed, the town spent additional  
16 general fund money in the amount \$79,638.07 for the design and approval  
17 of systems to remediate the water quality in the affected wells together  
18 with additional repairs and replacement of supply and distribution  
19 facilities of the water district. The expenditure of such funds by the  
20 town board prior to the district's establishment as described above was  
21 in violation of the provisions of section 165.10 of the local finance  
22 law. Further, the town failed to repay the moneys advanced from the  
23 general fund to make improvements to the former water system by the  
24 close of the fiscal year in which the advance was made with reasonable  
25 interest in accordance with section 9-a of the general municipal law.  
26 Lastly, bond resolutions were not adopted by the town board at the  
27 times such funds were paid and, as a result, the town is prohibited from  
28 financing such costs with bonds or notes. The specific actions taken by  
29 the town in furtherance of establishment of the Birch Hill - Highview  
30 Water District and the construction and financing of improvements there-  
31 in 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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1 Upon the death of the owner of the Birch Hill Water Company, the water  
2 system fell into disrepair. The estate of the owner of the Birch Hill  
3 Water Company made attempts to obtain approval of rate increases from  
4 the public service commission to help fund the ongoing maintenance and  
5 repair of the water system, which attempts were unsuccessful. Ultimate-  
6 ly, the estate conveyed title to the water system to the town for nomi-  
7 nal consideration and the town assumed operation of the water system and  
8 commenced proceedings to establish a water district. Before the  
9 proceedings to establish the water district could be concluded, the  
10 Putnam County department of health, in determining what improvements  
11 needed to be made to the water district, identified an unregulated water  
12 system located adjacent to the proposed water district which served  
13 multiple residences with water sourced from a common well. The health  
14 department directed the town to incorporate the residences served by the  
15 common well into the water district being formed. Whereupon the town  
16 recommenced proceedings to establish the water district. In or about  
17 2014, the town's engineer prepared a new map, plan and report to incor-  
18 porate the additional residential lots as benefitted properties within  
19 the Birch Hill - Highview Water District, obtained easements to install  
20 and repair water distribution lines and made necessary repairs and  
21 installations to the existing water supply and distribution facilities.  
22 On October 23, 2014, the town board held a public hearing with respect  
23 to the formation of the Birch Hill - Highview Water District and adopted  
24 an order establishing the Birch Hill-Highview Water District on November  
25 6, 2014. The town filed said order with the county clerk; however, the  
26 town board did not obtain the permission of the state comptroller for  
27 the establishment of the district as required by section 209-f of the  
28 town law.

29 Before the town could obtain permission from the state comptroller for  
30 the establishment of the Birch Hill - Highview Water District, it became  
31 apparent that the identification of emerging PFOA contamination of the  
32 water wells serving the water system and the associated need to design  
33 and construct an appropriate filtration system would necessitate amend-  
34 ing or restating the map, plan and report forming the basis for the  
35 establishment of the water district. Moreover, it would entail seeking  
36 the additional ability to finance the extraordinary expenses associated  
37 with the necessary PFOA remediation measures. In 2023, the town's  
38 consulting engineer prepared a new map, plan and report for the Birch  
39 Hill - Highview Water District. On July 27, 2023, the town board held a  
40 public hearing with respect to the establishment of the Birch Hill -  
41 Highview Water District. On August 10, 2023, the town board adopted a  
42 public interest order subject to permissive referendum and such order  
43 was posted and published as required. No petition for referendum having  
44 been filed with the town clerk in a timely manner, the public interest  
45 order was thereafter filed with the county clerk. By verified applica-  
46 tion dated March 8, 2024, the town board sought permission of the state  
47 comptroller for the establishment of the Birch Hill - Highview Water  
48 District in the town. Due to the passage of time and other irregulari-  
49 ties in the establishment of the water district, the state comptroller  
50 has opined that the formation of the proposed district would require a  
51 special act of the legislature.

52 The town has operated the Birch Hill - Highview Water District as a de  
53 facto water district in violation of the provision of articles 12 and  
54 12-A of the town law since 2015. In addition to using general fund money  
55 to pay the cost of the initial improvements described herein, the town  
56 has spent general fund money to replace water mains on account of breaks

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

12 The failure of the town board to adopt a bond resolution prior to the  
13 expenditure of such moneys for the water system improvements was contra-  
14 ry to the provisions of section 165.10 of the local finance law.

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

27 § 3. Bonds authorized. The town is authorized to issue bonds or notes  
28 in the principal amount of \$348,544.39 on behalf of the Birch Hill -  
29 Highview Water District for the purpose of reimbursing the general fund  
30 of the town from which the moneys have been temporarily diverted since  
31 2015 to pay certain of the costs incurred in the establishment and  
32 improvement of the water district acquired by the town in accordance  
33 with the mandate of the public service commission and the Putnam county  
34 health department, notwithstanding the provisions of section 165.10 of  
35 the local finance law which provides, in effect, that a bond resolution  
36 shall have first been adopted before any such temporary diversion of  
37 funds shall have been made and notwithstanding section 9-a of the gener-  
38 al municipal law which requires money advanced to be repaid to the fund  
39 from which they were advanced not later than the close of the fiscal  
40 year in which the advance was made with reasonable interest. The period  
41 of probable usefulness for such improvements is forty (40) years from  
42 the date of initial improvements, which occurred in 2015. In antic-  
43 ipation of such bonds, bond anticipation notes are hereby authorized.

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

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

54 § 6. This act shall take effect immediately.