



Legislative Report from the NYS Assembly Committee on Environmental Conservation

Sheldon Silver, Speaker ■ Robert K. Sweeney, Chair ■ Summer 2012



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Significant Legislation from the 2012 Session

Invasive Species

(Chapter 267 of 2012)

The Assembly and Senate passed legislation (A.9422-A Sweeney), which was signed into law by the Governor, that would provide the Departments of Environmental Conservation and Agriculture and Markets with greater authority to regulate the sale and possession of invasive species. In 2010, the Washington Post published an article estimating the economic impact of invasive species at \$120 billion per year nationwide. An Assembly Environmental Conservation Committee hearing, held in September 2011, revealed that unfortunately, New York has not been immune to the devastation. Aquatic and terrestrial non-native species have all invaded New York including, giant hogweed, mitten crabs, emerald ash borers, and feral hogs. This legislation would require the Departments to promulgate regulations to develop a list of prohibited invasive species that would be illegal to sell or possess with the intent to sell, and a list of regulated species that would be legal to sell but which could not be introduced into the environment. In addition, the bill would establish penalties for those who violate the restrictions.

Sewage Pollution Right to Know Act

The Assembly and Senate passed legislation (A.10585-A Rules Sweeney) that would enact the Sewage Pollution Right to Know Act. This legislation, if signed into law by the Governor, would increase the amount of sewage discharge information released to the public. Publicly-owned treatment works and operators of publicly-owned sewer systems would be required to report discharges of untreated or partially-treated sewage, including combined sewage overflows, to the Department of Environmental Conservation within two hours and to the general public within four hours. For discharges meeting the reporting criteria, information would include: volume and treated state of the discharge, the date, time and location of the discharge; the expected duration and a description of the steps being taken to contain the discharge. The Assembly also passed A.9420-A (Sweeney) that contained more stringent reporting requirements; however, that legislation was not passed by the Senate.

Assemblyman Sweeney sponsored legislation creating the Sewage Pollution Right-to-Know Act. Many communities in New York State are served by aging sewage infrastructure. Discharges of untreated or partially treated sewage can pose a significant health risk to people that are fishing or swimming in contaminated waterways.

The bill has passed both the Assembly and the Senate, and needs only the Governor's signature to become law.





Assemblyman Sweeney makes the case for passing A.10519, which would drive funding to the Environmental Protection Fund (EPF). The bill will mean substantial increases in EPF programs such as municipal parks, waterfront revitalization, open space land acquisition, and water quality improvement. It has been estimated that EPF-supported industries generate \$40 billion for the state's economy every year. This increase in funding is accomplished without raising a single tax or fee. The bill, which has passed both the Assembly and the Senate, will increase EPF funding by \$56 million over the next few years, and needs only the governor's signature to become law.

Increased Funding for the Environmental Protection Fund

The Assembly and Senate passed legislation (A.10519 Rules Sweeney) that would increase the amount of funding available for the Environmental Protection Fund. The Environmental Protection Fund is the primary mechanism for funding the State's environmental programs, including for example, water quality projects, recycling initiatives and land acquisition. If signed into law by the Governor, this legislation would direct existing funds from unclaimed bottle deposits to be deposited to the Environmental Protection Fund. The increase would include \$10 million beginning in State Fiscal Year 2013-2014 and increase incrementally until reaching \$56 million in 2018-19 and in each fiscal year thereafter. A detailed funding chart is at right.

State Fiscal Year	EPF Funding Increase
2013-14	\$10 million
2014-15	\$20 million
2015-16	\$30 million
2016-17	\$40 million
2017-18	\$50 million
2018-19	\$56 million

Laws that Took Effect Recently

Water Withdrawal Reporting (Chapter 401 of the Laws of 2011)

New York State is fortunate to have plentiful water resources. The preservation and protection of these resources is vital to New York's residents and businesses, which rely on these resources for drinking water supplies, and to support agriculture, manufacturing and other industries and recreation in the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs now and into the future.

Pursuant to Environmental Conservation Law Article 15, the Department of Environmental Conservation (DEC) has been entrusted with the responsibility to conserve and control New York State's water resources for the benefit of all the inhabitants of the State. However, the water supply provisions of Title 15 derive primarily from statutes written in the first half of last century, and therefore are outdated. Under the provisions of Article 15, DEC's regulatory authority is largely limited to public water supplies to ensure adequate quantities of potable water. As a result, consumptive uses of water for agricultural, commercial, and industrial purposes remained largely unregulated by the State.

The law the Legislature passed in 2010 to update the State's water laws and to authorize DEC to implement a permitting program for all water withdrawal systems with a capacity equal to or greater than 100,000 gallons per day went into effect in February of this year. This law also allowed New York to meet its obligation under the Great Lakes-St. Lawrence River Basin Water Resources Compact to implement a regulatory program for water withdrawals in the Great Lakes Basin.



Chemicals in Consumer Products

In 1976, the federal government enacted the Toxic Substances Control Act (TSCA). Despite the passage of over 30 years, the significant growth in the number of new chemicals, and the development of new health information indicating that certain populations, such as children, are subject to additional risks from chemical exposure, TSCA has remained largely unchanged.

An increasing number of states have begun their own chemical regulation programs. Some states, such as Maine and Washington, have adopted a regulatory framework in which all chemicals that meet certain health and environmental criteria are banned. Other states, including New York, have adopted a chemical-by-chemical approach, focusing primarily on children's products.

This Session, the following bills were passed by the Assembly:

Bisphenol A in Receipt Paper

(A.212-B Maisel)

It has been estimated that as many as 33.5 tons of Bisphenol A (BPA) are used in thermal-paper receipts, accounting for up to 2.2 percent of the total weight of the receipt. BPA is a known endocrine disrupter. In March of this year, the FDA issued a report on BPA that indicated "both the National Toxicology Program at the National Institutes of Health and FDA have some concerns about the potential effects of BPA on the brain, behavior, and prostate gland in fetuses, infants and young children." In 2011, Connecticut banned the sale of receipt paper containing BPA. This legislation follows the model established in Connecticut, and would ban the sale of receipt paper containing BPA beginning October 1, 2014. However, if the U.S. EPA does not identify safe, commercially available alternatives to BPA by June 30, 2014, implementation would be delayed until July 1, 2016. This legislation passed the Assembly but the Senate has not yet taken action.

Cadmium in Children's Products

(A.1158 Sweeney)

Cadmium is a metal that is inexpensive, malleable and highly resistant to corrosion, making it desirable for use in plastics as a stabilizer and in electroplating; however, cadmium interferes with how the body uses calcium and has been associated with harmful health impacts including cancer and kidney disease. An Associated Press story found high levels of cadmium in low-priced children's jewelry for sale in the United States. This legislation would prohibit the sale of cadmium-added novelty products (including children's jewelry) containing cadmium in an amount equal to or in excess of .0075 percent by weight. (A similar standard has been included by other states including California, Connecticut and Maryland.) This legislation passed the Assembly but the Senate has not yet taken action.

Toxic Chemicals in Children's Products

(A.3141-A Sweeney)

Currently, New York prohibits the use of dangerous chemicals on a chemical by chemical basis. This approach is especially problematic for children's products since children are often more vulnerable to smaller amounts of chemicals. Several other states, including Washington, California, and Maine have adopted more comprehensive chemical policies after finding high levels of cadmium, lead and other dangerous chemicals in children's products ranging from crib mattresses to toys. This legislation is modeled after those states and is intended to prevent the use of dangerous chemicals and encourage the use of safer chemical alternatives in children's products. This legislation would require the Department of Environmental Conservation (DEC) to develop a list of dangerous chemicals and require manufacturers of children's products containing such chemicals to report the use of such chemicals to DEC. The sale of children's products containing hazardous chemicals would be prohibited. This legislation passed the Assembly, but the Senate has not yet taken action.

Prohibition on the Use of Coal Tar Products

(A.7854-C Rosenthal)

Coal tar products used as pavement sealants contain high levels of Polycyclic Aromatic Hydrocarbons (PAHs). PAHs have been identified as water contaminants by the United States Geological Survey (USGS) and the Environmental Protection Agency. Several states and municipalities have enacted restrictions on the use of coal tar pavement products. Coal tar components are listed as carcinogens in the European Union and in the National Toxicology Program's 11th Report on Carcinogens. In addition, the CDC has identified PAHs as "reasonably anticipated to be human carcinogens." This legislation would prohibit the sale and use of coal tar pavement products containing more than 10,000 milligrams per kilogram of PAH. This legislation passed the Assembly, but the Senate has not yet taken action.

Prohibition on the Use of the Flame Retardant TRIS

(A.9045 Sweeney)

TRIS is the common name for a family of chlorinated flame retardants. In the 1970s, TRIS (TDCPP) was used in children's sleepwear as a substitute for TRIS-BP, which was banned by the Consumer Product Safety Commission because of potential health concerns. Subsequent testing on TRIS TDCPP caused manufacturers to voluntarily stop using it in children's sleepwear; however, it is used currently in plastics, resins and polyurethane foams found in car seats and other baby products. TDCPP is not chemically bound to these products. As a result, TDCPP is present in indoor air and dust, in the environment, and in human tissue. Younger children, particularly babies, are especially vulnerable because of their smaller and developing bodies. California recently added TDCPP to its Proposition 65 list, which lists "chemicals known to the State of California to cause cancer and birth defects or other reproductive harm," because of animal studies demonstrating its adverse health effects. This legislation would prohibit the use of TDCPP in children's products. This legislation passed the Assembly, but the Senate has not yet taken action. Last year, the Legislature banned the use of TRIS (TCEP) in child care products because of the risks TCEP poses to children's health.

Polystyrene Foam Food Service Products

(A.2097 Kavanagh)

Polystyrene foam, commonly called "Styrofoam," is a liquid hydrocarbon that is commercially manufactured from petroleum. Each year, Americans use billions of polystyrene cups. Recycling is not widely available and the cups are discarded, posing a risk of contamination as styrene leaches out of the cups. In addition to the environmental concerns raised by the resulting solid waste, the EPA has found exposure to styrene can lead to adverse health impacts. This legislation would require the State and municipalities to use food service products that are compostable, provided that comparable, affordable products can be obtained. This legislation has passed the Assembly, but the Senate has not yet taken action.

Water Quality

In response to a hearing held in September of last year, the Assembly passed the following legislation:

Private Well Testing

A.667-B (Jaffee)

Over one million residents of New York State get their drinking water from private wells. While laws require municipal water suppliers to test their water periodically, and to send residents an annual report on the quality of that water, there are no similar protections for private wells. As a result, people using private wells around the State are often unaware that there may be problems with their drinking water. This legislation would establish a private well testing program in New York State and require testing of private drinking water wells at the time of property transfer. Testing would include: bacteria (total coliform), nitrates, iron, manganese, pH, and all volatile organic compounds for which a maximum contaminant level has been established pursuant to public health regulations. This legislation passed the Assembly, but the Senate has not yet taken action.

Rockland Bergen Bi-State Watershed

Flood Protection Act

A.2206 (Zebrowski)

This legislation would create the Rockland Bergen Bi-State Watershed Flood Protection Act. It is intended to address the flood hazards along the various waterways that cross the interstate border region, with a focus on the Hackensack, Mahwah, Ramapo, Saddle Rivers and the Sparkill Brook/Creek. This legislation passed the Assembly, but the Senate has not yet taken action.

Seagrass Restoration Efforts

A.7988-A (Sweeney)

New York's seagrass beds are a vital habitat and nursery grounds for numerous commercially, recreationally and ecologically important fish and shellfish species. Seagrass beds used to be much larger, with some estimates of as much as 200,000 acres in 1930. Today only 21,803 acres remain. In 2006, the Legislature established the Seagrass Research Monitoring and Restoration Task Force to make recommendations on how to restore seagrass. This legislation, which is based on the Task Force recommendations, would authorize the Department of Environmental Conservation to designate seagrass management areas and to restrict activities that may take place in such areas. This legislation passed the Assembly and Senate and was signed into law by the Governor.

Proper Disposal of Pharmaceutical Products

A.9421 (Sweeney)

Expired, unwanted, or unused pharmaceutical drugs require proper disposal in order to prevent accidental ingestion and/or unintended environmental harm. For example, an extensive water analysis conducted by the United States Geological Survey detected at least one contaminant in approximately 96 percent of the water samples taken from 74 water sources in 25 states and Puerto Rico.

Although drug collection events are taking place in some communities, a more coordinated effort is required to help prevent continued contamination. This legislation would authorize the Department of Environmental Conservation, in coordination with the State Police, to establish a demonstration drug disposal program at State Police facilities in representative rural, suburban and urban areas of the State in order to provide data that could be used to determine the most effective methods of disposal. This legislation passed the Assembly, but the Senate has not yet taken action.

Both the Assembly and the Senate passed legislation (A.10623 Rules, Cusick) to create the Internet System for Tracking Over-Prescribing Act (I-STOP) which, if signed into law by the Governor, would include provisions intended to strengthen the regulation of controlled substances and would also require the State Department of Health to establish a program to allow for the safe disposal of unused controlled substances anonymously.

Jamaica Bay Dredging

A.9871-A (Goldfeder)

Due to the increase in vessel size in recent years, waterways such as channels, berthing areas and harbors are being excavated in a process known as dredging to maintain sufficient depth for safe and efficient vessel operation. Jamaica Bay was dredged to supply soil for a number of construction projects and in the process borrow pits were created in the bay. These borrow pits have been identified as an attractive alternative for the disposal of dredge material. This legislation would restrict the types of dredged materials that could be placed in the borrow pits. Any dredged material would be required to: comply with federal unrestricted ocean dumping criteria; have been tested with test results indicating no unacceptable toxicity or bioaccumulation; demonstrate no potential short term (acute) impacts or long-term (chronic) impacts; and, require no special precautionary measures when being dumped. This legislation passed the Assembly, but the Senate has not yet taken action.

Long Island Water Quality

A.10584 Rules (Sweeney)

Long Island's groundwater aquifer is the sole source of drinking water for nearly three million residents of Nassau and Suffolk counties and is highly vulnerable to pollution. Because of the value of this resource to the public health and economic stability of the region, protection of Long Island's groundwater resources has been the subject of substantial federal, state and local investment, legislation and policy initiatives for nearly 40 years. Despite these efforts, recent water quality data clearly demonstrates that Long Island's water resources are in a state of gradual decline. Also, it is now well understood that Long Island's groundwater is functionally interconnected to its surface water resources and that groundwater pollution is rapidly becoming a key management issue in the protection and restoration of Long Island's surface waters, which are integral to the Long Island economy.

The implications of increasing levels of pollution in Long Island's ground and surface water resources are significant and require a comprehensive management and restoration strategy that cannot be accomplished by any one local agency or municipality. Long Island's water resources do not conform to political boundaries and current planning, zoning, and sanitary code regulations are not adequately integrated to accomplish the necessary regional surface and groundwater quality goals. This legislation would create a regional water planning board and comprehensive water conservation and management plan to help achieve regional water quality goals, management solutions and integrated regulatory programs. This legislation passed the Assembly, but the Senate has not yet taken action.