

Senate Bill S7736

2023-2024 Legislative Session

Relates to permits and financial security for reclamation for salt mining beneath a lake

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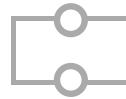
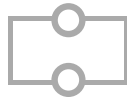
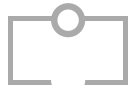


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Lea Webb
(D, WF) 52ND SENATE DISTRICT

CURRENT BILL STATUS -
In Senate Committee [Rules Committee](#)



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2023-S7736 (ACTIVE) - DETAILS

See Assembly Version of this Bill:

A8250

Current Committee:

Senate Rules

Law Section:

Environmental Conservation Law

Laws Affected:

Amd §§23-2711 & 23-2715, En Con L; amd §81, Pub Lds L

2023-S7736 (ACTIVE) - SUMMARY

Relates to permits and financial security for reclamation for salt mining beneath a lake; requires such permits to be subject to environmental quality review procedures; requires financial security to cover any damages directly or indirectly resulting from salt mining activities beneath a lake, including, but not limited to, those resulting from collapse or water contamination.

2023-S7736 (ACTIVE) - SPONSOR MEMO

BILL NUMBER: S7736

SPONSOR: WEBB

PURPOSE:

Relates to permits and financial security for reclamation for salt mining beneath a lake

SUMMARY OF PROVISIONS:

Section 1 of the bill amends subdivisions 11 and 12 of section 23-2711 of the environmental conservation law and adds new subdivisions 11-a and 14. to add requirements to the permit renewal process for projects that allow salt mining beneath a lake.

Section 2 amends subdivision 6 of section 23-2715 of

the environmental conservation law regarding the required financial security for reclamation for projects that include salt mining beneath a lake.

Section 3 adds a new subdivision 3 to section 81 of the public lands law that requires the duration of such permit, consent or lease from New York State with respect to salt mining beneath a lake be tied to the duration of the permit issued by the department of environmental conservation pursuant to title 27 of article 23 of the environmental conservation law.

Section 4 adds a severability clause.

Section 5 adds the effective date.

JUSTIFICATION

In August, Cargill, Inc. began the process of putting up for sale the salt mine it has operated for more than five decades beneath Cayuga Lake in Lansing, Tompkins County, and on several thousand acres of land it leases from New York State. The New York State public lands law authorizes the New York State Office of General Services (OGS) to grant the use of state-owned lands for mining purposes, including those lands found beneath lakes. Since the mid 1970s, OGS has provided consent orders to Cargill to allow for salt mining under Cayuga Lake. The most recent consent order in 2019 provided that the grantee, Cargill, would be able to provide notice to OGS and then extend the

consent order for ten years. This allowance for the continued operation of the Cayuga Salt Mine beneath the lake comes without the performance of an environmental impact statement or environmental quality review which falls under the purview of the New York State Department of Environmental Conservation that provides additional permitting through the Mined Land Reclamation Law that includes reclamation and closure requirements of mined lands.

While the Mine Safety and Health Administration has been able to inspect the operation for worker safety, the DEC has not regularly inspected the mine for issues related to protecting the Cayuga Lake ecosystem. Now, after decades of mining by Cargill, Cayuga Lake is saltier than nearly all the other Finger Lakes. Without intervention from the DEC, the lake could become permanently salinated, destroying 100,000 residents' source of drinking water and the bedrock of the region's \$3 billion, 60,000-employee food, wine and recreational tourism economy.

Past civil lawsuits challenging the continuance of permits by the New York State Department of Environmental Conservation (DEC) have been dismissed. The assertions made through these lawsuits primarily revolved around the lack of DEC oversight or the requirement of an environmental impact statement on the mine and on an approved expansion in light of significant environmental issues with the Retsof salt mine in Livingston County. In 1994, the Restof Salt Mine began to flood and caused serious

issues including ruined water, sinkholes and bridge damage. At that time it was determined that the cause was due to a seismic fault. It is important to note that a similar seismic fault is located along the Cayuga Salt Mine at the lake. The similarities of these two mines has the communities surrounding Cayuga lake and its watershed very concerned about the environmental and ecological risks that an accident or other seismic issue to the salt mine would cause to the lake.

Cayuga Lake and its watershed is the largest in the region spanning 7 counties, covering 860 square miles with more than 140 streams that flow into the lake. Cayuga Lake itself is surrounded by a multitude of communities and supports a tourist economy seeking the natural beauty of the lake and the opportunity to visit the many vineyards found along the Cayuga Lake Wine Trail. An accident within the salt mine below Cayuga Lake would have an immediate and severe impact on the communities along the lake and within the watershed. This legislation seeks to bolster the required protections by requiring environmental impact statements as well as an updated reclamation plan along with appropriate financial security to ensure the communities relying on Cayuga Lake and its watershed for drinking water, leisure, and economic development are protected from potential harm.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None to state.

EFFECTIVE DATE:

This act shall take effect on the thirtieth day provided that section 2 of the bill shall take effect on the ninetieth day. 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.

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S T A T E O F N E W Y O R K

7736

2023–2024 Regular Sessions

I N S E N A T E

November 3, 2023

Introduced by Sens. WEBB, MAY -- read twice and





FIND YOUR SENATOR

law, in relation to permits and financial security
for reclamation for
salt mining beneath a lake

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 11 and 12 of section 23-2711
of the environmental conservation law, as added by chapter 166 of
the laws of 1991,
are amended and two new subdivisions 11-a and 14 are
added to read as
follows:

11. Permits issued pursuant to this title shall
be renewable. A
complete application for renewal shall contain the
following:

- (a) completed application forms;
- (b) an updated mining plan map consistent with
paragraph (a) of subdivision one of section 23-2713 of this title and
including an identification of the area to be mined during the proposed
permit term;
- (c) a description of any changes to the mined
land-use plan, WHICH
SHALL INCLUDE, WITH RESPECT TO A PERMIT FOR SALT
MINING BENEATH A LAKE,
AN UPDATED RECLAMATION PLAN ACCOUNTING FOR ANY
DIFFERENCES IN CIRCUMSTANCES SINCE THE RECLAMATION PLAN WAS LAST APPROVED
BY THE DEPARTMENT;
and
- (d) an identification of reclamation accomplished
during the existing
permit term.

11-A. NOTWITHSTANDING ANYTHING IN THIS SECTION TO
THE CONTRARY, WITH
RESPECT TO SALT MINING BENEATH A LAKE, ANY PERMIT
RENEWAL APPLICATION

SHALL:

- (A) NOT CONSTITUTE A MINOR PROJECT WITHIN THE MEANING OF ARTICLE SEVENTY OF THIS CHAPTER;
- (B) BE TREATED AS AN APPLICATION FOR A NEW PERMIT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

[] is old law to be omitted.

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(C) CONSTITUTE AN ACTION REQUIRING ENVIRONMENTAL QUALITY REVIEW PURSU-
 ANT TO ARTICLE EIGHT OF THIS CHAPTER; AND

(D) BE DEEMED AN ACTION THAT IS LIKELY TO REQUIRE THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO SUBPARAGRAPH (I) OF PARA-
 GRAPH (C) OF SUBDIVISION TWO OF SECTION 8-0113 OF THIS CHAPTER.

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter; PROVIDED, HOWEVER, AND NOTWITHSTANDING SUBDIVI-
 SION THIRTEEN OF THIS SECTION OR ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, ANY TRANSFER OF A PERMIT TO ENGAGE IN SALT MINING ACTIV-
 ITIES BENEATH A LAKE SHALL CONSTITUTE A MATERIAL MODIFICATION OF THE PERMIT AND, IF NO ENVIRONMENTAL IMPACT STATEMENT HAS BEEN PREPARED PURSUANT TO THE ENVIRONMENTAL QUALITY REVIEW REQUIREMENTS OF ARTICLE EIGHT OF THIS CHAPTER WITH RESPECT TO SUCH MINING WITHIN THE PRECEDING TWENTY YEARS, SUCH TRANSFER SHALL:

- (A) NOT CONSTITUTE A MINOR PROJECT WITHIN THE MEANING OF ARTICLE SEVENTY OF THIS CHAPTER;

(B) BE TREATED AS AN APPLICATION FOR A NEW PERMIT;
 (C) CONSTITUTE AN ACTION REQUIRING ENVIRONMENTAL
 QUALITY REVIEW PURSU-
 ANT TO ARTICLE EIGHT OF THIS CHAPTER; AND
 (D) BE DEEMED AN ACTION THAT IS LIKELY TO REQUIRE
 THE PREPARATION OF
 AN ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO
 SUBPARAGRAPH (I) OF PARA-
 GRAPH (C) OF SUBDIVISION TWO OF SECTION 8-0113 OF THIS
 CHAPTER.

14. AS SOON AS PRACTICABLE AND IN ANY EVENT WITHIN
 ONE HUNDRED EIGHTY
 DAYS OF THE EFFECTIVENESS OF THIS SUBDIVISION, THE
 DEPARTMENT SHALL
 PREPARE AN ENVIRONMENTAL IMPACT STATEMENT IN
 COMPLIANCE WITH THE ENVI-
 RONMENTAL REVIEW REQUIREMENTS OF ARTICLE EIGHT OF
 THIS CHAPTER WITH
 RESPECT TO ANY SALT MINING BENEATH A LAKE IF NO
 ENVIRONMENTAL IMPACT
 STATEMENT HAS BEEN PREPARED WITHIN THE PRECEDING
 TWENTY YEARS WITH
 RESPECT TO SUCH MINING. ANY HOLDER OF A PERMIT TO
 MINE SALT BENEATH A
 LAKE SHALL COMPLY WITH ALL REASONABLE REQUESTS OF
 THE DEPARTMENT IN
 CONNECTION WITH PREPARATION OF SUCH AN ENVIRONMENTAL
 IMPACT STATEMENT.
 THE PREPARATION OF SUCH ENVIRONMENTAL IMPACT STATEMENT
 SHALL INCLUDE A
 COMPREHENSIVE REVIEW OF THE CUMULATIVE EFFECTS OF
 SUCH MINING, INCLUD-
 ING CONSIDERATION OF THE EFFECTS OF PAST MINING AND
 THEIR POTENTIAL
 FUTURE ENVIRONMENTAL IMPACTS.

§ 2. Section 23-2715 of the environmental
 conservation law, as amended
 by chapter 166 of the laws of 1991, subdivision 6 as
 amended by chapter
 60 of the laws of 1993, is amended to read as follows:
 § 23-2715. Financial security for reclamation.

1. Before the department may issue a permit, the
 applicant, unless
 exempt, shall furnish financial security (A) to
 ensure the performance

of reclamation as provided in the approved mined land-use plan, (B) TO COVER ANY DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM SALT MINING ACTIVITIES BENEATH A LAKE, INCLUDING, BUT NOT LIMITED TO, THOSE RESULTING FROM COLLAPSE OR WATER CONTAMINATION, and (C) naming the state as beneficiary. Financial security shall be in the form of a bond from a corporate surety licensed to do business as such in the state or any other form the department may deem acceptable. Any interest accruing as a result of such security shall be the exclusive property of the permittee.

2. The department shall determine the amount, condition, and terms of the financial security. The amount shall be based upon the estimated cost of reclaiming the affected land AND THE ESTIMATED LIABILITY FROM POTENTIAL DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM SALT MINING ACTIVITIES BENEATH A LAKE, INCLUDING, BUT NOT LIMITED TO, THOSE RESULT-

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ING FROM COLLAPSE OR WATER CONTAMINATION, which shall be based on information contained in the permit application, THE ENVIRONMENTAL QUALITY REVIEW CONDUCTED PURSUANT TO ARTICLE EIGHT OF THIS CHAPTER and upon such information as an investigation by the department may disclose. AT A MINIMUM, THE DEPARTMENT SHALL CONSIDER THE PARTICULAR CIRCUMSTANCES OF THE MINE AND MINING ACTIVITIES IN MAKING DETERMINATIONS PURSUANT TO THIS SUBDIVISION RELATED TO FINANCIAL SECURITY AMOUNTS REQUIRED TO COVER POTENTIAL DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM SALT MINING

ACTIVITIES BENEATH A LAKE, INCLUDING, BUT NOT LIMITED TO, THOSE RESULTING FROM COLLAPSE OR WATER CONTAMINATION. SUCH CONSIDERATION SHALL INCLUDE, BUT NOT BE LIMITED TO:

- (A) THOSE FACTORS CONSIDERED IN DETERMINING THE AMOUNT OF FINANCIAL SECURITY TO ENSURE PERFORMANCE OF RECLAMATION;
- (B) GEOLOGIC, HYDROLOGIC, AND OTHER ENVIRONMENTAL CONDITIONS;
- (C) THE PRESENCE OF ANY ENVIRONMENTALLY SENSITIVE AREAS OR RESOURCES;
- (D) THE PRESENCE OF PERSONS AND PROPERTY; AND
- (E) LOCAL ECONOMIC IMPACTS OF POTENTIAL DAMAGES.

THE DEPARTMENT SHALL ENGAGE AN INDEPENDENT THIRD PARTY WITH THE NECESSARY ACTUARIAL AND/OR OTHER APPROPRIATE EXPERTISE EITHER TO MAKE A DETERMINATION WITH RESPECT TO SUCH POTENTIAL DAMAGES OR TO REVIEW THE DETERMINATION OF THE DEPARTMENT WITH RESPECT THERETO AND, IN THE CASE OF A REVIEW, THE DEPARTMENT SHALL INCORPORATE THE APPROPRIATE RECOMMENDATIONS BY SUCH INDEPENDENT THIRD-PARTY REVIEWER INTO ITS FINAL DETERMINATION.

3. The financial security shall remain in full force and effect until the department has approved the reclamation AND DETERMINED THAT THERE IS NO CONTINUING RISK OF DAMAGES DIRECTLY OR INDIRECTLY FROM SALT MINING ACTIVITIES BENEATH A LAKE, INCLUDING, BUT NOT LIMITED TO, THOSE RESULTING FROM COLLAPSE OR WATER CONTAMINATION. At the discretion of the department, the permittee may secure the release of that portion of the financial security for affected land on which reclamation has been completed and approved by the department.

4. If the financial security shall for any reason be cancelled, within thirty days after receiving notice thereof, the

permittee shall provide a valid replacement under the same conditions as described in this section. Failure to provide a replacement bond within such period may, at the discretion of the commissioner, result in the immediate suspension of the mining permit by the department.

5. If a permit is suspended or revoked, the department may require the permittee to commence reclamation upon thirty days notice.

6. If the permittee fails to commence or to complete the reclamation as required, the department may attach the financial security furnished by the permittee. In any event, the full cost of completing reclamation

AND ANY DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM SALT MINING ACTIV-

ITIES BENEATH A LAKE, INCLUDING, BUT NOT LIMITED TO, THOSE RESULTING

FROM COLLAPSE OR WATER CONTAMINATION shall be the personal liability of

the permittee and/or the person engaged in mining and the department,

acting by the attorney general, may bring suit to recover all costs to

secure the reclamation AND DAMAGES DIRECTLY OR INDIRECTLY RESULTING FROM

SALT MINING ACTIVITIES BENEATH A LAKE not covered by the financial secu-

rity. The materials, machinery, implements and tools of every

description which may be found at the mine, or other assets of the

permittee and/or the person engaged in mining shall be subject to a lien

of the department for the amount expended for reclamation of affected

lands, AND FOR MAKING WHOLE ANY PARTIES SUFFERING ANY DAMAGES DIRECTLY

OR INDIRECTLY RESULTING FROM SALT MINING ACTIVITIES BENEATH A LAKE, and

shall not be removed without the written consent of the department. Such lien may be foreclosed by the attorney general in the same manner as a mechanic's lien. Any and all moneys recovered shall be deposited in the environmental regulatory account pursuant to section 72-1009 of this chapter.

7. Political subdivisions, municipalities, the United States and any of its agencies and agencies of the state shall be exempt from the requirements of this section.

8. ANY PERMITTEE WHICH HAS FURNISHED A FINANCIAL SECURITY WHICH IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION ON THE EFFECTIVE DATE OF THIS SUBDIVISION SHALL BE IN VIOLATION OF THIS SECTION IF SUCH FINANCIAL SECURITY IS NOT BROUGHT INTO COMPLIANCE WITHIN SIX MONTHS OF SUCH EFFECTIVE DATE.

§ 3. Section 81 of the public lands law is amended by adding a new subdivision 3 to read as follows:

3. NOTWITHSTANDING SUBDIVISIONS ONE AND TWO OF THIS SECTION, WITH RESPECT TO A PERMIT, CONSENT, OR LEASE ISSUED WITH RESPECT TO SALT MINING ACTIVITIES BENEATH A LAKE, THE DURATION OF SUCH PERMIT, CONSENT, OR LEASE SHALL NOT BE LONGER THAN THE DURATION FOR WHICH MINING IS ALLOWABLE UNDER THE PERMIT ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE TWENTY-SEVEN OF ARTICLE TWENTY-THREE OF THE ENVIRONMENTAL CONSERVATION LAW IN RESPECT OF SUCH MINING.

§ 4. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect

the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 5. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that section two of this act shall take effect on the ninetieth 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.

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