



Legislation Text

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By Council Members Ferreras-Copeland, Constantinides, Dickens, Eugene, Gentile, Kallos and Rosenthal (in conjunction with the Mayor)

A Local Law to establish a temporary program to resolve outstanding judgments imposed by the environmental control board

Be it enacted by the Council as follows:

Section 1. Temporary program to resolve outstanding judgments.

a. Definitions. For purposes of this section, the following definitions apply:

“Base penalty” means, with respect to any notice of violation returnable to the environmental control board, the penalty that would be imposed upon a timely admission by the respondent or finding of liability after an adjudication, pursuant to the environmental control board penalty schedule, without regard to reductions of penalty in cases of mitigation or involving stipulations.

“Default decision and order” means a decision and order of the environmental control board, pursuant to subparagraph (d) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, determining a respondent’s liability for a violation charged based upon that respondent’s failure to plead within the time allowed by the rules of the environmental control board or failure to appear before the environmental control board on a designated adjudication date or on a subsequent date following an adjournment.

“Default penalty” means, with respect to any notice of violation returnable to the environmental control board, the penalty imposed by the environmental control board, pursuant to subparagraph (d) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, in an amount up to the

maximum amount prescribed by law for the violation charged.

“Environmental control board” means a division of the office of administrative trials and hearings and its tribunal, as described in section 1049-a of the charter of the city of New York.

“Environmental control board penalty schedule” means the schedule of penalties adopted as a rule by the environmental control board in title 48 of the rules of the city of New York, or such predecessor schedule as may have applied on the date of the violation.

“Imposed penalty” means, with respect to any notice of violation returnable to the environmental control board, the penalty imposed by the environmental control board after an adjudication, pursuant to subparagraph (a) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York.

“Judgment” means monies owed to the city of New York as a result of a final order of the environmental control board imposing a civil penalty, either as a result of a default decision and order or after a hearing and finding of violation, that was entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, pursuant to subparagraph (g) of paragraph one of subdivision d of section 1049-a of the charter of the city of New York, no later than ninety days prior to the commencement of the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law and determining a respondent’s liability for a violation charged in accordance with the environmental control board penalty schedule.

“Resolve” means, with respect to an outstanding judgment of the environmental control board, to conclude all legal proceedings in connection with a notice of violation.

“Respondent” means a person or entity named as the subject of a notice of violation returnable to, or a judgment issued by, the environmental control board.

b. Temporary program to resolve outstanding judgments. Subject to an appropriate concurring resolution of the environmental control board described in subdivision a of section 1049-a of the charter of the city of New York, and notwithstanding any other provision of law to the contrary, the

commissioner of finance shall establish a temporary program to resolve outstanding judgments imposed by the environmental control board, for a ninety day period to be effective during the fiscal year that commences on July first, two thousand sixteen, that permits respondents who are subject to:

1. judgments resulting from a default decision and order to resolve such judgments by payment of base penalties without payment of default penalties and accrued interest; and

2. judgments entered after an adjudication and finding of violation to resolve such judgments by payment of seventy-five percent of the imposed penalties without payment of accrued interest.

c. Resolution of outstanding judgments. 1. A judgment resulting from a default decision and order may not be resolved under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision b of this local law unless the base penalty of the violation that is the subject of the default decision and order can be determined from the notice of the violation, default decision and order, and environmental control board penalty schedule alone.

2. A judgment may not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law if the judgment had been the subject of a settlement agreement with the department of finance or the department of law that was executed after the expiration of the temporary default resolution program established by the department of finance pursuant to local law number forty-seven for the year two thousand nine.

3. A judgment arising out of a notice of violation that includes an order requiring the correction of the violation may not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law unless the respondent:

(i) enters into a written agreement with the department of finance providing that the violation shall be corrected within six months from the date of the written agreement;

(ii) pays to the department of finance a deposit equal to twenty-five percent of the amount that would resolve the judgment under the temporary program to resolve outstanding judgments pursuant to

subdivision b of this local law;

(iii) demonstrates to the satisfaction of the city agency that issued the notice of violation that the condition cited in the notice of violation has been corrected; and

(iv) pays to the department of finance the balance of the amount that would resolve the judgment, provided that the violation has been corrected within such six month period pursuant to subparagraph (iii) of this paragraph.

4. If a violation that is the subject of a written agreement with the department of finance pursuant to paragraph three of this subdivision is not corrected to the satisfaction of the city agency that issued the notice of violation within the required six month period, judgment in the amount of the default penalty plus accrued interest less the deposit, or judgment in the amount of the imposed penalty plus accrued interest less the deposit, as applicable, shall continue to have full legal effectiveness and enforceability.

d. Conditions for participation in the temporary program to resolve outstanding judgments.

1. A respondent seeking resolution of a judgment resulting from a default decision and order under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision b of this local law shall admit liability for the violation that resulted in the default decision and order. A judgment resulting from a default decision and order may not be resolved under the temporary program to resolve outstanding judgments pursuant to paragraph one of subdivision b of this local law if the respondent seeking resolution of the judgment fails or refuses to admit liability.

2. A respondent seeking resolution of a judgment under the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law shall seek resolution of all outstanding judgments against such respondent.

3. A judgment shall not be resolved under the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law if a respondent fails to pay the amounts described in subdivision b of this local law to the department of finance within the three month period of such temporary

program.

4. A respondent who is the subject of a criminal investigation relating to the violation that is the subject of the judgment shall not be eligible to participate in the temporary program to resolve outstanding judgments.

5. A resolution of a judgment under the temporary program to resolve outstanding judgments shall constitute a waiver of all legal and factual defenses to liability for the judgment.

e. Certificates of correction. Nothing contained herein shall require a city agency to issue or approve certificates of correction or the equivalent if such city agency does not have a program to do so as of the effective date of this local law.

f. Duration of program. The duration of the program shall be ninety days. After the program has concluded, any judgment that remains outstanding and has not been resolved by this program shall continue to have full legal effectiveness and enforceability regardless of whether it could have been resolved under this program.

g. Authority to resolve a judgment resulting from a default decision and order. Notwithstanding any law to the contrary, for three years following the conclusion of the temporary program to resolve outstanding judgments pursuant to subdivision b of this local law, the department of finance, when acting pursuant to a delegation from the environmental control board, shall not resolve any judgment resulting from a default decision and order that had been eligible for resolution pursuant to such temporary program by accepting payment of any amount that is less than half the default penalty and the accrued interest on such recalculated default penalty.

h. Notification of public. The commissioner of finance shall publicize the temporary program to resolve outstanding judgments so as to maximize public awareness of and participation in such program.

§ 2. This local law shall take effect immediately.