



Legislation Text

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Int. No. 2234-A

By Council Members Gjonaj, Chin, Cabrera, The Speaker (Council Member Johnson), Holden, Ayala, Gibson, Brannan, Rosenthal, Louis and Gennaro

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 terms have the following meanings:

Amnesty period. The term “amnesty period” means the period of time, as determined by the department of finance pursuant to subdivision f of this section, during which a payor or respondent may resolve outstanding judgments imposed by the environmental control board pursuant to the temporary program.

Base penalty. The term “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 applicable penalty schedule, without regard to reductions of penalty in cases of mitigation or involving stipulations.

City. The term “city” means the city of New York.

Default decision and order. The term “default decision and order” means a decision and order of the environmental control board, pursuant to subparagraph (d) of paragraph (1) of subdivision d of section 1049-a of the charter of the city, 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. The term “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 (1) of subdivision d of section 1049-a of the charter of the city, in an amount up to the maximum amount prescribed by law for the violation charged.

Environmental control board. The term “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.

Imposed penalty. The term “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 (1) of subdivision d of section 1049-a of the charter of the city.

Judgment. The term “judgment” means monies owed to the city 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 or any other place provided for the entry of civil judgments within the state, pursuant to subparagraph (g) of paragraph (1) of subdivision d of section 1049-a of the charter of the city, no later than 90 days prior to the first day of the amnesty period and determining a respondent’s liability for a violation charged in accordance with the applicable penalty schedule.

Pandemic judgment. The term “pandemic judgment” means a judgment entered for a violation that was docketed on or after March 7, 2020.

Payor. The term “payor” means a person or entity who is not the respondent but who makes the payment for a particular judgment docketed by the environmental control board.

Penalty schedule. The term “penalty schedule” means the schedule of penalties for particular violations of state or local law, or any rule or regulation promulgated thereunder, adopted as a rule by the environmental control board or by any city agency for violations adjudicated by the environmental control board pursuant to

section 1049-a of the charter of the city, and published in the rules of the city, or any such predecessor schedule as may have applied on the date of the violation.

Pre-pandemic judgment. The term “pre-pandemic judgment” means a judgment entered for a violation that was docketed prior to March 7, 2020.

Resolve. The term “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. The term “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.

State. The term “state” means the state of New York.

Temporary program. The term “temporary program” means the temporary program to resolve outstanding judgments established pursuant to this local law.

b. Temporary program to resolve outstanding judgments. 1. 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, 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 that permits respondents who are subject to:

(a) 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;

(b) pre-pandemic judgments entered after an adjudication and finding of violation to resolve such judgments by payment of 75 percent of the imposed penalties without payment of accrued interest; and

(c) pandemic judgments entered after an adjudication and finding of violation to resolve such judgments by payment of 25 percent of the imposed penalties without payment of accrued interest.

2. All judgments described in paragraph 1 of this subdivision may be resolved under the temporary program except as otherwise specified by subdivisions c and d of this section.

c. Judgments that may only be resolved under the temporary program subject to certain conditions. 1. A judgment resulting from a default decision and order may not be resolved under the temporary program 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, or applicable penalty schedule alone or from a combination of any of the foregoing.

2. A judgment arising out of a notice of violation that includes an order requiring the correction of the violation may be resolved under the temporary program only if the city agency that issued the notice of violation has issued, on or before the last day of the amnesty period, a certificate of compliance indicating that the condition cited in such notice of violation has been corrected to the satisfaction of such agency.

3. A judgment resulting from a default decision and order for which a respondent or payor has, prior to the first day of the amnesty period, made payments greater than or equal to the base penalty, a pre-pandemic judgment entered after an adjudication and finding of violation for which a respondent or payor has, prior to the first day of the amnesty period, made payments greater than or equal to 75 percent of the imposed penalties, and a pandemic judgment entered after an adjudication and finding of violation for which a respondent or payor has, prior to the first day of the amnesty period, made payments greater than or equal to 25 percent of the imposed penalties, may only be resolved under the temporary program if such a respondent or payor submits an application for resolution of such judgment to the commissioner of finance in a manner and form to be determined by such commissioner. Such commissioner may impose a fee of up to \$1 for submission of such an application.

d. Judgments that may not be resolved under the temporary program. 1. A judgment shall not be resolved under the temporary program if the judgment had been the subject of an agreement with a marshal or sheriff that was executed prior to the amnesty period.

2. A judgment shall not be resolved under the temporary program if a respondent or payor fails to pay the amounts described in subdivision b of this local law to the department of finance on or before the last day

of the amnesty period.

3. A judgment shall not be resolved under the temporary program if such judgment is for a violation that is the subject of a criminal investigation.

e. Conditions for participation in the temporary program. 1. A payment from a respondent or payor to resolve an outstanding judgment from a default decision and order under the temporary program shall be deemed an admission of the liability for the violation that resulted in the default decision and order.

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

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

g. Duration of the temporary program. The amnesty period shall be in effect for a period of 90 days during the fiscal year that commences on July 1, 2021, provided that such amnesty period may be extended for an additional period of 90 days by rule of the commissioner of finance if such commissioner determines that such an extension would encourage further resolution of outstanding judgments, generate revenue for the city and reduce the amount of outstanding debt owed to the city.

h. Judgments that remain outstanding after conclusion of the temporary program. After the amnesty period 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.

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

§ 2. This local law takes effect immediately.

JJ
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