ACT 140 - 2025

BOARD OF LEGISLATORS

COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the litigation between the Save the Sound and Atlantic Clam Farms of Connecticut ("Plaintiffs") and the County, as set forth below, as set forth below.

Your Committee notes that the County owns and operates various sewer districts, including four along the Long Island Sound – Blind Brook, Mamaroneck, Port Chester, and New Rochelle ("the Four Districts"). All county sewer districts are subject to permits issued by NYSDEC ("SPDES Permits"). For the Four Districts, as part of a consent order with NYSDEC relating to nitrogen removal in the Long Island Sound, the County conducted a flow monitoring study from 2009 to 2011, in order to determine which municipalities were exceeding the flow limits of the County Sewer Act, which imposes a daily limit on municipal discharges to 150 gallons of wastewater per capita ("the Flow Limit"). Every municipality in the Four Districts exceeded these flow limits for some period of time. Separately, the County was also subject to a consent order with NYSDEC to end the use of two Overflow Retention Facilities ("ORFs") that served the New Rochelle Sewer District ("NRSD").

Your Committee is informed that Plaintiffs commenced this lawsuit back in 2015, alleging violations of, *inter alia*, the U.S. Clean Water Act – primarily focused on the County's purported violations of these two consent orders. The main thrust of Plaintiffs' argument was that the County was required to enforce the County Sewer Act, and particularly the Flow Limit, and failed to do so. The lawsuit was amended to name all of the individual municipalities in the Four Districts as well.

Your Committee is further informed that, before any party answered or otherwise responded to the complaint, the matter was stayed for settlement discussions. Over the last decade, each of the municipalities settled with Plaintiffs.[4] Some settlements have completed, some have been amended, and others remain open. In all but one of the settlements,[5] the municipality has been required to perform investigations and repairs to its sewer systems. Municipalities have also agreed to pay attorneys' fees and fund environmental benefit projects as part of settlements.

The County Attorney has informed your Committee that Plaintiffs and the County have also engaged in extensive settlement negotiations and reached a proposed resolution, which is primarily focused on the following:

- An agreement to take "reasonable measures" to enforce the County Sewer Act within the Four Districts;
- Conducting a round of flow monitoring no early than 2037,[6] to determine compliance with the Flow Limit within the Four Districts;
- Payment of $425,000 in already incurred attorneys' fees and costs, plus another $25,000 to cover any future monitoring fees and costs; and
- Spending $475,000 on future environmental benefit projects.

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[4] The four municipalities located in the NRSD eventually proceeded to litigation, before ultimately reaching a settlement. None of the other municipalities litigated against Plaintiffs.

[5] The NRSD municipalities, who were all performing remediation work as part of an IMA with the County, did not agree to complete any work as part of their settlement with Plaintiffs.

[6] This date is subject to further delay if municipalities are delayed in completing repairs.

The County Attorney further noted that this would be in the form of a stipulation of settlement (as opposed to a judicially ordered consent decree), and is contingent on: (1) this Honorable Board's approval; (2) no objection from the United States Department of Justice (as required by the Clean Water Act); and (3) the District Court agreeing to retain jurisdiction over any future dispute that may arise under the settlement.

The County Attorney has recommended approval of the settlement. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

Dated: White Plains, New York

June 30, 2025

COMMITTEE ON Budget & Appropriations

COMMITTEE ON Law & Major Contracts

Dated: June 30, 2025
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

COMMITTEES ON

Budget & Appropriations

Law & Major Contracts

FISCAL IMPACT STATEMENT

SUBJECT: Save the Sound Settlement ☐ **NO FISCAL IMPACT PROJECTED**

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

☐ GENERAL FUND ☐ AIRPORT FUND ☒ SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense $ 450,000

Total Current Year Revenue

Source of Funds (check one): ☒ Current Appropriations ☐ Transfer of Existing Appropriations

☐ Additional Appropriations ☐ Other (Revenue)

Identify Accounts: 223-60-0310-4990; 227-60-0710-4990; 228-60-0810-4990; 237-601710-4990

Potential Related Operating Budget Expenses: Annual Amount $ 450,000

Describe: Save the Sound lawsuit settlement which will be broken down to:

Fund 223 Blind Brook - $104,611.57; Fund 227 Mamaroneck - $206,955.31

Fund 228 New Rochelle - $111,766.27; Fund 237 Port Chester - $26,666.85

Potential Related Operating Budget Revenues: Annual Amount

Describe:

Anticipated Savings to County and/or Impact on Department Operations:

Current Year:

Next Four Years: The county will have 2 years to apportion $475,000 on approved storm-water projects which may result in future debt service TBD. In addition, there will be a flow monitoring starting 2037, the cost is TBD.

Prepared by: William Olli

Title: Assistant Budget Director

Department: Budget

Date: June 9, 2025

Reviewed By: [signature]

Budget Director

Date: 6/9/25

ACT NO. 140 - 2025

AN ACT authorizing the County Attorney to settle the law suit of *Save the Sound, et al. v. Westchester County, New York, et al.*, pending in the United States District Court for the Southern District of New York, Case No. 15-cv-06323

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized to settle the proceeding entitled *Save the Sound v. Westchester County, New York, et al.*, pending in the United States District Court for the Southern District of New York, Docket No. 15-cv-06323, in accordance with the proposed settlement terms presented by the County Attorney, including:

A) The County will conduct a round of flow monitoring, for a minimum of twelve weeks, in or around 2037, to determine the flows entering the County trunk sewers from those municipalities in the Blind Brook, Mamaroneck, Port Chester, and New Rochelle Sewer Districts;

B) Payment of $425,000 in already incurred attorneys' fees and costs, plus another $25,000 to cover any future monitoring fees and costs; and

C) Spending $475,000 on future environmental benefit projects.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Act, Act No. 140 - 2025, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on June 30, 2025, and approved by the County Executive on July 1, 2025.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 1st day of July, 2025.

Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

COUNTY BOARD OF LEGISLATORS * WESTCHESTER COUNTY, N.Y. * COUNTY 1683 ORGANIZED