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

S. 4762--A A. 7240--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

April 20, 2011

IN SENATE -- Introduced by Sen. McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to expanding the definition of "public body" for purposes of conservation easements

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

Section 1. Subdivision 3 of section 49-0303 of the environmental conservation law, as amended by chapter 201 of the laws of 2011, is amended to read as follows:

3. "Public body" means the FEDERAL GOVERNMENT, THE state or a municipal corporation as that term is defined in section two of the general municipal law. Such term shall further include the Palisades interstate park commission; the Central Pine Barrens joint planning and policy commission; and a soil and water conservation district as that term is defined in section three of the soil and water conservation districts law.

S 2. The opening paragraph of subdivision 5 of section 49-0305 of the environmental conservation law, as amended by chapter 292 of the laws of 1984, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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A conservation easement may be enforced in law or equity by its grantor, ITS holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any conservation easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce a conservation easement that:

S 3. Paragraph (b) of subdivision 7 of section 49-0305 of the environmental conservation law, as amended by chapter 292 of the laws of 1984, is amended to read as follows:

(b) standards and procedures which require each conservation easement held by a public body, OTHER THAN THE FEDERAL GOVERNMENT, to include terms under which the easement shall be modified where the commissioner has found after a non-adjudicatory public hearing at which the public shall be given opportunity to be heard, that such easement is inconsistent with any other interest in land required for the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television services and that no reasonable alternative exists for the local gathering, transmission or distribution of such service. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to the provisions of subdivision five of this section at such address as such person shall file with the commissioner.

S 4. This act shall take effect immediately.