

4280

2013-2014 Regular Sessions

I N   S E N A T E

March 19, 2013

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Introduced by Sen. BALL -- (at request of the Division of Homeland Security and Emergency Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the penal law, in relation to enhancing fire safety on state property

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

1     Section 1. Subdivision 19 of section 156 of the executive law, as  
2     renumbered by chapter 615 of the laws of 2006, is renumbered subdivision  
3     20 and a new subdivision 19 is added to read as follows:  
4     19. ISSUE PERMITS AND ENFORCE THE PROVISIONS OF ARTICLE FOUR HUNDRED  
5     FIVE OF THE PENAL LAW FOR THE PUBLIC DISPLAYS OF FIREWORKS AND INDOOR  
6     PYROTECHNICS ON OR WITHIN STATE PROPERTY, UNLESS SUCH AUTHORITY HAS BEEN  
7     DELEGATED PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY THE  
8     OFFICE OF FIRE PREVENTION AND CONTROL.  
9     S 2. Section 405.00 of the penal law, subdivision 1 as amended by  
10    chapter 661 of the laws of 1972 and subdivisions 2, 3, 3-a and 4 as  
11    amended by section 21 of part CC of chapter 57 of the laws of 2009, is  
12    amended to read as follows:  
13    S 405.00 Permits for public displays of fireworks.  
14    1. Definition of "permit authority." The term "permit authority," as  
15    used in this section, means and includes the agency authorized to grant  
16    and issue the permits provided in this section[, which agency in the  
17    territory within a state park shall be the state agency having custody  
18    and control thereof, in the]. THE PERMIT AUTHORITY ON OR WITHIN STATE  
19    PROPERTY SHALL BE THE OFFICE OF FIRE PREVENTION AND CONTROL. THE PERMIT  
20    AUTHORITY FOR territory within a county park shall be the county park  
21    commission, or such other agency having jurisdiction, control and/or  
22    operation of the parks or parkways within which any fireworks are to be  
23    displayed[,]. THE PERMIT AUTHORITY in a city shall be the duly consti-  
24    tuted licensing agency thereof and, in the absence of such agency, shall

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

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1 be an officer designated for the purpose by the legislative body there-  
2 of[,]. THE PERMIT AUTHORITY in a village shall be an officer designated  
3 for the purpose by the board of trustees thereof and THE PERMIT AUTHORI-  
4 TY in the territory of a town outside of villages shall be an officer  
5 designated for the purpose by the town board thereof.

6 2. Permits for fireworks displays. Notwithstanding the provisions of  
7 section 270.00 of this chapter, the permit authority [of a] FOR state  
8 [park] PROPERTY, county [park, city, village or town] PARKS, CITIES,  
9 VILLAGES, OR TOWNS may grant a permit for the display of fireworks to  
10 municipalities, fair associations, amusement parks, persons, or organ-  
11 izations of individuals that submit an application in writing. The  
12 application for such permit shall set forth:

13 (a) The name of the body sponsoring the display and the names of the  
14 persons actually to be in charge of the firing of the display who shall  
15 possess a valid certificate of competence as a pyrotechnician as  
16 required under the general business law and article sixteen of the labor  
17 law. The permit application shall further contain a verified statement  
18 from the applicant identifying the individuals who are authorized to  
19 fire the display including their certificate numbers, and that such  
20 individuals possess a valid certificate of competence as a pyrotechni-  
21 cian.

22 (b) The date and time of day at which the display is to be held.

23 (c) The exact location planned for the display.

24 (d) The number and kind of fireworks to be discharged.

25 (e) The manner and place of storage of such fireworks prior to the  
26 display.

27 (f) A diagram of the grounds on which the display is to be held show-  
28 ing the point at which the fireworks are to be discharged, the location  
29 of all buildings, highways and other lines of communication, the lines  
30 behind which the audience will be restrained and the location of all  
31 nearby trees, telegraph or telephone lines or other overhead  
32 obstructions.

33 (g) Such other information as the permit authority may deem necessary  
34 to protect persons or property.

35 3. Applications for permits. All applications for permits for the  
36 display of fireworks shall be made at least five days in advance of the  
37 date of the display and the permit shall contain provisions that the  
38 actual point at which the fireworks are to be fired be in accordance  
39 with the rules promulgated by the commissioner of labor pursuant to  
40 section four hundred sixty-two of the labor law and that all the persons  
41 in actual charge of firing the fireworks shall be over the age of eigh-  
42 teen years, competent and physically fit for the task, that there shall  
43 be at least two such operators constantly on duty during the discharge  
44 and that at least two approved type fire extinguishers shall be kept at  
45 as widely separated points as possible within the actual area of the  
46 display. FOR ANY APPLICATIONS MADE FOR THE DISPLAY OF FIREWORKS ON STATE  
47 PROPERTY, THE STATE FIRE ADMINISTRATOR SHALL COORDINATE THE ISSUANCE OF  
48 SUCH PERMITS WITH THE HEAD OF THE POLICE OR FIRE DEPARTMENT OR BOTH,  
49 WHERE THERE ARE SUCH DEPARTMENTS. The legislative body of a [state  
50 park,] county park, city, village or town may provide for approval of  
51 such permit by the head of the police or fire department or both where  
52 there are such departments. No permit granted and issued hereunder  
53 shall be transferable. After such permit shall have been granted, sales,  
54 possession, use and distribution of fireworks for such display shall be  
55 lawful solely therefor.

1 3-a. Notwithstanding the provisions of subdivision three of this  
2 section, no permit may be issued to conduct a display of fireworks upon  
3 any property where the boundary line of such property is less than five  
4 hundred yards from the boundary line of any property which is owned,  
5 leased or operated by any breeder as defined in subdivision four of  
6 section two hundred fifty-one of the racing, pari-mutuel wagering and  
7 breeding law.

8 4. Bonds. Before granting and issuing a permit for a display of fire-  
9 works as herein provided, the permit authority shall require an adequate  
10 bond from the applicant therefor, unless it is a state [park] ENTITY,  
11 county park, city, village or town, in a sum to be fixed by the permit  
12 authority, which, however, shall not be less than one million dollars,  
13 conditioned for the payment of all damages, which may be caused to a  
14 person or persons or to property, by reason of the display so permitted  
15 and arising from any acts of the permittee, his OR HER agents, employ-  
16 ees, contractors or subcontractors. Such bond shall run to the state  
17 [park,] IF THE PERMIT IS GRANTED FOR A DISPLAY ON STATE PROPERTY, OR TO  
18 THE county park, city, village or town in which the permit is granted  
19 and issued and shall be for the use and benefit of any person or persons  
20 or any owner or owners of any property so injured or damaged, and such  
21 person or persons or such owner or owners are hereby authorized to main-  
22 tain an action thereon, which right of action also shall accrue to the  
23 heirs, executors, administrators, successors or assigns of such person  
24 or persons or such owner or owners. The permit authority may accept, in  
25 lieu of such bond, an indemnity insurance policy with liability coverage  
26 and indemnity protection equivalent to the terms and conditions upon  
27 which such bond is predicated and for the purposes provided in this  
28 section.

29 5. Local ordinances superseded. All local ordinances regulating or  
30 prohibiting the display of fireworks are hereby superseded by the  
31 provisions of this section. Every city, town or village shall have the  
32 power to enact ordinances or local laws regulating or prohibiting the  
33 use, or the storage, transportation or sale for use of fireworks in the  
34 preparation for or in connection with television broadcasts.

35 S 3. Paragraph n of subdivision 1 and subdivision 4 of section 405.10  
36 of the penal law, as added by chapter 584 of the laws of 2003, are  
37 amended to read as follows:

38 n. Permit authority. The agency authorized to grant and issue the  
39 permits provided for in this section[, which agency in the territory  
40 within a state park shall be the state agency having custody and control  
41 thereof] ON OR WITHIN STATE PROPERTY SHALL BE THE OFFICE OF FIRE  
42 PREVENTION AND CONTROL, in the territory within a county park shall be  
43 the county park commission, or such other agency having jurisdiction,  
44 control, and/or operation of the parks or parkways within which any  
45 pyrotechnics are to be used, in a city shall be the duly constituted  
46 licensing agency thereof and, in the absence of such agency, shall be an  
47 officer designated for the purpose by the legislative body thereof, in a  
48 village shall be an officer designated for the purpose by the board of  
49 trustees thereof, and, in the territory of a town outside of villages,  
50 shall be an officer designated for the purpose by the town board there-  
51 of.

52 4. Bonds. Before granting and issuing a permit for a use of pyrotech-  
53 nics as provided in this section, the permit authority shall require an  
54 adequate bond from the applicant therefor, unless such applicant is a  
55 state [park] ENTITY, county park, city, village, or town, or from the  
56 person to whom a contract for such use shall be awarded, in a sum to be

1 fixed by the permit authority, which, however, shall not be less than  
2 five hundred thousand dollars, conditioned for the payment of all  
3 damages which may be caused to a person or persons or to property by  
4 reason of the use so permitted and arising from any acts of the permit-  
5 tee, his or her agents, employees, contractors, or subcontractors. Such  
6 bond shall run to the owner of the facility for which the permit is  
7 granted and issued and shall be for the use and benefit of any person or  
8 persons or any owner or owners of any property so injured or damaged,  
9 and such person or persons or such owner or owners are hereby authorized  
10 to maintain an action thereon, which right of action also shall accrue  
11 to the heirs, executors, administrators, successors, or assigns of such  
12 person or persons or such owner or owners. The permit authority may  
13 accept, in lieu of such bond, an indemnity insurance policy with liabil-  
14 ity coverage and indemnity protection equivalent to the terms and condi-  
15 tions upon which such bond is predicated and for the purposes herein  
16 provided.

17 S 4. This act shall take effect immediately.