

# STATE OF NEW YORK

8300--A

2017-2018 Regular Sessions

## IN ASSEMBLY

June 6, 2017

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the state finance law, in relation to the forest preserve health and safety land account and public utility improvements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 9 of the environmental conservation law is amended by adding a new title 21 to read as follows:

### TITLE 21

#### FOREST PRESERVE HEALTH AND SAFETY LAND ACCOUNT AND PUBLIC UTILITY IMPROVEMENTS

Section 9-2101. Health and safety land account creation and use.

9-2103. Highway right of way public utility improvements.

9-2105. Department reporting.

§ 9-2101. Health and safety land account creation and use.

1. Definitions. For purposes of this section:

a. "eligible project" means a public health or safety-related project necessary where no viable alternative exists, limited to the following:

(i) address bridge hazards to improve public safety on county highways and town highways;

(ii) elimination of the hazards of dangerous curves and grades on county and town highways to improve public safety;

(iii) relocation, maintenance, and reconstruction of county highways and town highways, including associated culverts, for the purpose of addressing public safety provided that no relocation of any single relocated portion shall exceed one mile in length;

(iv) water wells and necessary appurtenances when such wells are necessary to meet drinking water quality standards and are located with-

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

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1 in five hundred thirty feet of state highways, county highways and town  
2 highways; and

3 (v) stabilization devices for an existing utility pole adjacent to, or  
4 no more than the minimum distance from the width of highway necessary to  
5 comply with standard safety practices.

6 Eligible projects shall not include the use of chemicals/herbicides  
7 for clearing state land; the removal of trees and vegetation shall be  
8 minimized and the area shall be restored to pre-project conditions to  
9 the maximum extent practicable.

10 b. "county highway" shall have the same meaning as defined in subdivi-  
11 sion four of section three of the highway law.

12 c. "forest preserve expansion fund" shall mean the fund established  
13 pursuant to section ninety-seven-e of the state finance law.

14 d. "project sponsor" means a town, village, or county located in the  
15 counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamil-  
16 ton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan,  
17 Ulster, Warren and Washington.

18 e. "no viable alternative" means that no other option exists for the  
19 eligible project to address ongoing public health or safety concerns  
20 other than through the use of state lands.

21 f. "state highway" means a state highway as defined in subdivisions  
22 one, two and three of section three of the highway law.

23 g. "state lands" means lands owned by the state in forest preserve  
24 counties that are under the jurisdiction of the department.

25 h. "town highway" means a town highway, as defined in subdivision five  
26 of section three of the highway law, in existence as of January first,  
27 two thousand fifteen, listed on the local highway inventory maintained  
28 by the department of transportation, and annually plowed and regularly  
29 maintained.

30 i. "width of the highway" shall have the same meaning as paragraph k  
31 of subdivision one of section 9-2103 of this title.

32 2. Following approval by the legislature of two hundred fifty acres of  
33 land to be added to the forest preserve, a health and safety land  
34 account of not more than two hundred fifty acres is created for use by  
35 project sponsors for eligible projects necessary to protect health and  
36 safety where no viable alternative is available. The account will be  
37 administered by the department.

38 3. A project sponsor with an eligible project may apply to the health  
39 and safety land account to receive acreage for an eligible project. Such  
40 application shall include:

41 a. a resolution from the governing body of the project sponsor that  
42 includes:

43 (i) attestation that the project is necessary to address public health  
44 or safety and no viable alternatives exist;

45 (ii) attestation that such lands will only be used for eligible  
46 purposes and that any real property acquired shall not be sold, leased,  
47 exchanged, donated or otherwise disposed of or used for other than the  
48 eligible purposes for which it was approved without the express authori-  
49 ty of an act of the legislature.

50 b. a detailed summary of the proposed eligible project, including the  
51 whole action and all related activities, a detailed summary of the  
52 alternatives the project sponsor explored prior to arriving at the  
53 conclusion there were no viable alternatives;

54 c. specific metes and bounds, including total proposed acreage;

55 d. a narrative about the project, including a justification;

1 e. a metes and bounds description and accurate survey of any lands  
2 proposed for inclusion in the forest preserve. Such lands must be of  
3 equal environmental value and fair market value and reasonable equiv-  
4 alent usefulness and location to the state lands being discontinued or  
5 in the event that the project sponsor provides money in lieu of land,  
6 such money shall be at least equivalent to the fair market value of the  
7 state land proposed to be conveyed;

8 f. any necessary permits and authorizations; and,

9 g. an accurate survey.

10 4. Immediately upon determining that an application is complete, the  
11 department shall cause a notice of application, which shall also include  
12 the time period for public comments, to be published in the next avail-  
13 able state register and environmental notice bulletin as well as in a  
14 newspaper having general circulation in the area in which the eligible  
15 project is proposed to be located. Newspaper publications shall be  
16 provided by the project sponsor.

17 5. The department shall hold a public hearing on each eligible project  
18 at which the public shall be given an opportunity to be heard.

19 6. The department, following consultation with the department of  
20 transportation to determine that any required authorization has been  
21 provided, shall only deem a project sponsor eligible to receive acreage  
22 from the health and safety land account following a determination that:

23 a. the project meets the eligible project criteria, is necessary to  
24 protect public health or safety and the eligible project has no viable  
25 alternative on land not owned by the state;

26 b. the project minimizes adverse environmental impact to the maximum  
27 extent practicable;

28 c. the project will not adversely impact lands with recognized crit-  
29 ical or recreational value, as determined by the department based on a  
30 resource inventory and assessment;

31 d. the lands to be conveyed by the project sponsor for inclusion in  
32 the forest preserve, or the monies to be paid into the forest preserve  
33 expansion fund, are at least equivalent to the fair market value of the  
34 state land proposed to be conveyed.

35 7. Once an application has been approved the commissioner shall cause  
36 to be prepared an accurate survey map showing the boundaries of all  
37 state land proposed to be conveyed and shall notify the legislature.

38 8. a. Prior to the actual transfer of title or issuance of letters  
39 patent for an eligible project that has been approved by the department,  
40 the legislature shall approve each eligible project and the dedication  
41 of lands of equal environmental value and fair market value and reason-  
42 able equivalent usefulness and location to those state lands to be  
43 conveyed for inclusion in the forest preserve. Once approved by the  
44 legislature, title to the land shall be approved and the deed to the  
45 people of the state of New York of any lands dedicated shall be approved  
46 by the attorney general as to form and manner of execution and recorda-  
47 bility prior to its delivery.

48 b. Prior to the actual transfer of title or issuance of letters patent  
49 for an eligible project for which the total project cost is below the  
50 public work contract threshold pursuant to section one hundred three of  
51 the general municipal law and is less than one quarter linear mile  
52 total, which shall run and be measured parallel to the county highway or  
53 town highway, and, which has been approved by the department, title to  
54 land shall be approved and the deed to the people of the state of New  
55 York of any lands dedicated shall be approved by the attorney general as  
56 to form and manner of execution and recordability prior to its delivery.

9. Real property acquired, developed, improved, restored or rehabilitated by or through a project sponsor pursuant to this section shall not be leased, exchanged, donated or otherwise disposed of or used for other than the eligible project for which it was approved without the express authority of an act of the legislature. When the project sponsor determines such eligible project is no longer needed, the lands shall revert to the state forest preserve. The department shall prescribe the terms and conditions for the removal of any infrastructure.

§ 9-2103. Highway right of way public utility improvements.

1. Definitions. For purposes of this section:

a. "county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

b. "eligible project" shall mean burial or co-location of a public utility line or construction and maintenance of bicycle paths by a project sponsor within the width of a highway of a town highway, county highway or state highway that traverses state forest preserve land.

c. "project sponsor" shall mean a village, town, a county, located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington or, for:

(i) bicycle paths, the department of transportation,

(ii) for water lines, a public water supplier; or

(iii) for electric, telephone or broadband lines, a public utility company.

d. "public utility company" shall have the same meaning as such term is defined in section two of the public service law; provided, however, that for broadband projects a person subject to article eleven of the public service law shall be included.

e. "public utility line" shall mean only electric, telephone, broadband, water or sewer lines. Public utility line shall not include the construction of any new intrastate natural gas or oil pipelines that have not received all necessary state and local permits and authorizations as of June first, two thousand sixteen.

f. "public water supplier" shall mean a county or town water improvement district, village, New York city, public benefit corporation or public authority established pursuant to state law and empowered to construct and operate a municipal water management facility, as defined in section twelve hundred eighty-one of the public authorities law.

g. "state highway" shall mean a state highway as defined in subdivisions one, two and three of section three of the highway law.

h. "state lands" shall mean lands owned by the state in forest preserve counties that are under the jurisdiction of the department.

i. "town highway" shall mean a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

j. "water supply projects" shall mean drinking water wells.

k. "width of the highway" shall mean three rods or the deeded, recorded municipal or state right of way or easement in existence as of January first, two thousand fifteen.

2. Pursuant to approval by the department and the department of transportation and following a public hearing on each eligible project at which the public shall be given an opportunity to be heard, a public utility line may be co-located within or buried beneath the width of the highway of any state highway, county highway, or town highway.

1 3. A project sponsor for an eligible project within the width of the  
2 highway shall submit an application for a permit to the department that  
3 at minimum shall include:

4 a. a resolution from the governing body of the project sponsor, or in  
5 the case of a public utility seeking to utilize the width of highway of  
6 a town highway, the governing body of the town, or the width of highway  
7 of a county, the county governing board, that includes:

8 (i) approval of the project;

9 (ii) attestation that such width of highway lands will only be used  
10 for eligible purposes;

11 (iii) attestation that the project will minimize the removal of trees  
12 and vegetation and restore the area to pre-project condition to the  
13 maximum extent practicable.

14 b. specific metes and bounds, including total proposed acreage of the  
15 width of highway land sought;

16 c. a narrative about the project, including a justification;

17 d. any necessary permits and authorizations; and,

18 e. an accurate survey.

19 4. Immediately upon determining that an application is complete, the  
20 department shall cause a notice of application, which shall also include  
21 the time period for public comments, to be published in the next avail-  
22 able state register and environmental notice bulletin as well as in a  
23 newspaper having general circulation in the area in which the eligible  
24 project is proposed to be located. Newspaper publications shall be  
25 provided by the project sponsor.

26 5. The department shall hold a public hearing on each eligible project  
27 at which the public shall be given an opportunity to be heard.

28 6. The department, following consultation with the department of  
29 transportation to determine that any required authorization has been  
30 provided, shall only approve an application for an eligible project  
31 permit following a determination that:

32 a. the eligible project meets the eligible project criteria;

33 b. the eligible project minimizes adverse environmental impact to the  
34 maximum extent practicable; and

35 c. the eligible project will not adversely impact lands with recog-  
36 nized critical or recreational value, as determined by the department  
37 based on a resource inventory and assessment.

38 7. After a hearing and opportunity to be heard, if the commissioner  
39 determines that a project sponsor is utilizing land for a purpose other  
40 than as authorized by the department, the commissioner may require  
41 removal of any improvements to the land and restoration of the land to a  
42 natural, vegetative state.

43 8. The department is authorized to promulgate such rules and regu-  
44 lations as may be necessary to implement and administer the provisions  
45 of this article.

46 § 9-2105. Department reporting.

47 1. The department shall issue an annual report to the legislature  
48 detailing the use of the health and safety land account and the highway  
49 right of way public utility improvement permits including: the number of  
50 applications received; the number of eligible projects applications  
51 approved and denied; the project description, narrative and acreage of  
52 eligible projects; the cumulative total of eligible projects listed by  
53 project sponsor; total deposits by each project sponsor into the forest  
54 preserve fund; annual disbursements from the forest preserve fund and  
55 the amount of land acquired with such disbursements; total number of



1 public utility improvement permits issued; and the cumulative total and  
2 project type of permits issued listed by project sponsor.

3 2. The information contained in such report shall also be made avail-  
4 able on the department's website and updated no less than annually.

5 § 2. Section 97-e of the state finance law, as amended by chapter 637  
6 of the laws of 1960, is amended to read as follows:

7 § 97-e. Forest preserve expansion fund. 1. There is hereby established  
8 in the state treasury a special fund, to be known as the forest preserve  
9 expansion fund, which shall consist of and into which shall be paid all  
10 moneys derived from the sale of certain forest preserve lands specified  
11 in section twenty-four of the public lands law, moneys received from a  
12 project sponsor of an eligible project for a health and safety land  
13 account transaction pursuant to section 9-2101 of the environmental  
14 conservation law and such other moneys as may be paid into said fund  
15 pursuant to law. The moneys in such fund shall be expended only for the  
16 acquisition of additional lands for the forest preserve within either  
17 the Adirondack or Catskill park as now fixed by law. Upon appropriation  
18 by the legislature, the [~~conservation~~] department of environmental  
19 conservation may use such moneys or any portion thereof for the acqui-  
20 sition of such additional lands subject to the approval of title thereto  
21 by the attorney general. All payments from such fund shall be made by  
22 the department of taxation and finance after audit by and upon warrant  
23 of the comptroller, on vouchers approved by the [~~conservation~~] commis-  
24 sioner of environmental conservation.

25 2. The [~~conservation~~] commissioner of environmental conservation is  
26 authorized to accept, in the name of the people of the state of New  
27 York, any gift or bequest of moneys to be paid into such forest preserve  
28 expansion fund and to be expended and disbursed as provided in subdivi-  
29 sion one of this section.

30 § 3. The enactment of this legislation shall be deemed to meet the  
31 legislative approval requirement pursuant to subdivision 8 of section  
32 9-2101 of the environmental conservation law, for an eligible project as  
33 defined in section 1 of section 9-2101 of the environmental conservation  
34 law, that consists of the relocation of a county-owned highway structure  
35 taken out of service in 2009, which spans the Schroon River in the town  
36 of Chester in the county of Warren. Such authorization is conditioned on  
37 the receipt by such project of all required permits and approvals and  
38 compliance with all the other criteria identified in section 9-2101 of  
39 the environmental conservation law.

40 § 4. This act shall take effect on the same date and in the same  
41 manner as a "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing  
42 an amendment to article 14 of the constitution, in relation to allowing  
43 public utility lines and bicycle paths on certain state lands in the  
44 forest preserve and establishing a forest preserve health and safety  
45 land account" takes effect, in accordance with section 1 of article 19  
46 of the constitution.