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

S. 424 A. 1187

2009-2010 Regular Sessions

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

(PREFILED)

January 7, 2009

IN SENATE -- Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

IN ASSEMBLY -- Introduced by M. of A. SAYWARD -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the executive law and the environmental conservation law, in relation to development of a permit system to provide disabled veterans access to certain restricted bodies of water through the use of float planes

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

Section 1. Subdivision 3 of section 816 of the executive law is renumbered subdivision 4 and a new subdivision 3 is added to read to follows:

3. THE MASTER PLAN AND THE INDIVIDUAL MANAGEMENT PLANS SHALL BE REVIEWED PERIODICALLY AND SHALL BE AMENDED FROM TIME TO TIME PURSUANT TO SECTION 15-0506 OF THE ENVIRONMENTAL CONSERVATION LAW, AND WHEN SO AMENDED SHALL AS AMENDED HENCEFORTH GUIDE THE MANAGEMENT OF STATE LANDS IN THE ADIRONDACK PARK. AMENDMENTS TO THE MASTER PLAN SHALL BE PREPARED BY THE AGENCY, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND SUBMITTED AFTER PUBLIC HEARING TO THE GOVERNOR FOR APPROVAL.

S 2. The environmental conservation law is amended by adding a new section 15-0506 to read as follows:

S 15-0506. PERMITS FOR FLOAT PLANE ACCESS TO BODIES OF WATER IN THE ADIRONDACK PARK.

1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING DEFINITIONS SHALL APPLY:

A. "FLOAT PLANE" SHALL MEAN AN AIRPLANE EQUIPPED WITH FLOATS FOR LANDING ON OR TAKING OFF FROM A BODY OF WATER.

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

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B. "AREA" MEANS A WATER BODY UNDER THE JURISDICTION OF THE DEPARTMENT WHICH PURSUANT TO SECTION EIGHT HUNDRED SIXTEEN OF THE EXECUTIVE LAW PROHIBITS FLOAT PLANE ACCESS.

C. "CERTIFICATION/CERTIFIED" MEANS A SIGNED STATEMENT BY A LICENSED PHYSICIAN ON A FORM PROVIDED BY THE DEPARTMENT, CERTIFYING THAT A PERSON HAS ONE OR MORE IMPAIRMENTS, DISABILITIES OR CONDITIONS AS DEFINED IN PARAGRAPH F OF THIS SUBDIVISION WHICH DOCUMENT THE NEED FOR THE PERSON TO USE A MOTOR VEHICLE, AND THE NATURE, DEGREE AND TERM OF THE DISABILITY. THE CERTIFICATION SHALL SPECIFY THE LENGTH OF TIME DURING WHICH SUCH CERTIFICATION IS EFFECTIVE. ALL CERTIFICATIONS MUST BE DATED WITHIN ONE YEAR PRIOR TO THE DATE OF APPLICATION.

D. "COMPANION" MEANS A PERSON WHO MAY ACCOMPANY THE QUALIFIED PERSON WITH A DISABILITY AS NECESSARY TO ATTEND TO HIS OR HER NEEDS.

E. "PERMIT" MEANS A NONTRANSFERABLE TEMPORARY REVOCABLE PERMIT AS AUTHORIZED BY THIS SECTION TO ALLOW THE USE OF STATE LANDS UNDER THE JURISDICTION OF THE DEPARTMENT.

F. "QUALIFIED VETERAN" MEANS A VETERAN AS DEFINED IN THIS SECTION WITH A DISABILITY WHO:

(I) CANNOT WALK TWO HUNDRED FEET WITHOUT STOPPING TO REST; OR

(II) CANNOT WALK WITHOUT THE USE OF, OR ASSISTANCE FROM, A BRACE, CANE, CRUTCH, ANOTHER PERSON, PROSTHETIC DEVICE, WHEELCHAIR, OR OTHER ASSISTIVE DEVICE; OR

(III) IS RESTRICTED BY LUNG DISEASE TO SUCH AN EXTENT THAT THE PERSON'S FORCED (RESPIRATORY) EXPIRATORY VOLUME FOR ONE SECOND, WHEN MEASURED BY SPIROMETRY, IS LESS THAN ONE LITER, OR THE ARTERIAL OXYGEN TENSION IS LESS THAN SIXTY MM/HG ON ROOM AIR AT REST; OR

(IV) USES PORTABLE OXYGEN; OR

(V) HAS A CARDIAC CONDITION TO THE EXTENT THAT THE PERSON'S FUNCTIONAL LIMITATIONS ARE CLASSIFIED IN SEVERITY AS CLASS III OR CLASS IV, ACCORDING TO STANDARDS SET BY THE AMERICAN HEART ASSOCIATION; OR

(VI) IS SEVERELY LIMITED IN THEIR ABILITY TO WALK DUE TO AN ARTHRITIC, NEUROLOGICAL, OR ORTHOPEDIC CONDITION.

G. "REGIONAL LAND MANAGER" MEANS THE INDIVIDUAL CHARGED WITH THE ADMINISTRATIVE RESPONSIBILITY FOR THE DEPARTMENT LANDS ON WHICH A QUALIFIED PERSON WITH A DISABILITY DESIRES ACCESS.

H. "VETERAN" MEANS A PERSON (A) WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE DURING A PERIOD OF WAR, OR WHO WAS A RECIPIENT OF THE ARMED FORCES EXPEDITIONARY MEDAL, NAVY EXPEDITIONARY MEDAL, MARINE CORPS EXPEDITIONARY MEDAL, OR GLOBAL WAR ON TERRORISM EXPEDITIONARY MEDAL, AND WHO WAS DISCHARGED OR RELEASED THEREFROM UNDER HONORABLE CONDITIONS, (B) WHO WAS EMPLOYED BY THE WAR SHIPPING ADMINISTRATION OR OFFICE OF DEFENSE TRANSPORTATION OR THEIR AGENTS AS A MERCHANT SEAMAN DOCUMENTED BY THE UNITED STATES COAST GUARD OR DEPARTMENT OF COMMERCE, OR AS A CIVIL SERVANT EMPLOYED BY THE UNITED STATES ARMY TRANSPORT SERVICE (LATER REDESIGNATED AS THE UNITED STATES ARMY TRANSPORTATION CORPS, WATER DIVISION) OR THE NAVAL TRANSPORTATION SERVICE; AND WHO SERVED SATISFACTORILY AS A CREW MEMBER DURING THE PERIOD OF ARMED CONFLICT, DECEMBER SEVENTH, NINETEEN HUNDRED FORTY-ONE, TO AUGUST FIFTEENTH, NINETEEN HUNDRED FORTY-FIVE, ABOARD MERCHANT VESSELS IN OCEANGOING, I.E., FOREIGN, INTERCOASTAL, OR COASTWISE SERVICE AS SUCH TERMS ARE DEFINED UNDER FEDERAL LAW (46 USCA 10301 & 10501) AND FURTHER TO INCLUDE "NEAR FOREIGN" VOYAGES BETWEEN THE UNITED STATES AND CANADA, MEXICO, OR THE WEST INDIES VIA OCEAN ROUTES, OR PUBLIC VESSELS IN OCEANGOING SERVICE OR FOREIGN WATERS AND WHO HAS RECEIVED A CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY AND A DISCHARGE CERTIFICATE, OR AN HONORABLE SERVICE CERTIFICATE/REPORT OF CASUALTY, FROM THE DEPARTMENT OF

DEFENSE, (C) WHO SERVED AS A UNITED STATES CIVILIAN EMPLOYED BY THE AMERICAN FIELD SERVICE AND SERVED OVERSEAS UNDER UNITED STATES ARMIES AND UNITED STATES ARMY GROUPS IN WORLD WAR II DURING THE PERIOD OF ARMED CONFLICT, DECEMBER SEVENTH, NINETEEN HUNDRED FORTY-ONE THROUGH MAY EIGHTH, NINETEEN HUNDRED FORTY-FIVE, AND WHO WAS DISCHARGED OR RELEASED THEREFROM UNDER HONORABLE CONDITIONS, OR (D) WHO SERVED AS A UNITED STATES CIVILIAN FLIGHT CREW AND AVIATION GROUND SUPPORT EMPLOYEE OF PAN AMERICAN WORLD AIRWAYS OR ONE OF ITS SUBSIDIARIES OR ITS AFFILIATES AND SERVED OVERSEAS AS A RESULT OF PAN AMERICAN'S CONTRACT WITH AIR TRANSPORT COMMAND OR NAVAL AIR TRANSPORT SERVICE DURING THE PERIOD OF ARMED CONFLICT, DECEMBER FOURTEENTH, NINETEEN HUNDRED FORTY-ONE THROUGH AUGUST FOURTEENTH, NINETEEN HUNDRED FORTY-FIVE, AND WHO WAS DISCHARGED OR RELEASED THEREFROM UNDER HONORABLE CONDITIONS.

2. THE DEPARTMENT SHALL PROVIDE A QUALIFIED VETERAN ACCESS BY A FLOAT PLANE TO APPROPRIATE LANDS UNDER ITS JURISDICTION CONSISTENT WITH SECTION ONE OF ARTICLE FOURTEEN OF THE STATE CONSTITUTION. THE DEPARTMENT SHALL DETERMINE ANNUALLY ON OR BEFORE JANUARY FIRST A MINIMUM FIVE BODIES OF WATER UNDER THE JURISDICTION OF THE DEPARTMENT WHICH PROHIBIT FLOAT PLANE ACCESS PURSUANT TO THE MASTER PLAN DEVELOPED IN ACCORDANCE WITH SECTION EIGHT HUNDRED SIXTEEN OF THE EXECUTIVE LAW, THAT SHALL BECOME ACCESSIBLE FOR QUALIFIED DISABLED VETERANS PURSUANT TO A PERMIT ISSUED UNDER THE PROVISIONS OF THIS SECTION. THE DEPARTMENT, IN DETERMINING WHICH BODIES OF WATER TO ALLOW FOR FLOAT PLANE ACCESS UNDER THIS SECTION, SHALL ENSURE THAT SUCH ACCESS WILL NOT ADVERSELY IMPACT THE ENVIRONMENT IN THE FOLLOWING MANNER;

A. THE NATURAL RESOURCES OF THE AREA ABILITY TO SUSTAIN USE BY FLOAT PLANE;

B. THE COMPATIBILITY WITH OTHER PUBLIC USE OF THE AREA;

C. THE SAFETY OF THE OPERATION OF A FLOAT PLANE AND THE ABILITY TO PREVENT DANGEROUS CONDITIONS;

D. A DEMONSTRATION THAT SIGNIFICANT ECOLOGICAL AREAS INCLUDING BUT NOT LIMITED TO THE FOLLOWING: EXCEPTIONAL FOREST OR PLANT COMMUNITIES, SHORELINES, UNIQUE AREAS, WETLANDS, HABITATS FOR RARE OR THREATENED SPECIES, AND BIOLOGICAL DIVERSITY AREAS POSSESSING UNIQUE, EXEMPLARY OR SIGNIFICANT NATURAL COMMUNITY REQUIRING SPECIAL PROTECTION, WILL NOT BE ADVERSELY AFFECTED BY THE OPERATION OF A FLOAT PLANE CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

3. A QUALIFIED DISABLED VETERAN MAY OBTAIN A PERMIT FOR THE USE OF A FLOAT PLANE ON DESIGNATED BODIES OF WATER PURSUANT TO THIS SUBDIVISION. SUCH PERMIT WILL AUTHORIZE TRAVEL BY A FLOAT PLANE TO AREAS DESIGNATED IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION.

A. THE APPLICANT MUST PRESENT CERTIFICATION OF HIS/HER QUALIFYING DISABILITY UPON APPLICATION, UNLESS THE PERSON HAS AN OBVIOUS, VISUALLY IDENTIFIABLE PERMANENT QUALIFYING DISABILITY, OR THE APPLICANT PRESENTS A NON-AMBULATORY HUNTER PERMIT.

B. THE APPLICANT MUST SUBMIT A COMPLETED APPLICATION TO ANY REGIONAL OFFICE OF THE DEPARTMENT IN WHICH A DESIGNATED BODY OF WATER IS LOCATED.

C. THE PERMIT SHALL SPECIFY THE AUTHORIZATION FOR UP TO THREE COMPANIONS TO ACCOMPANY THE QUALIFIED PERSON WITH A DISABILITY, IF HE OR SHE CHOOSES TO BE SO ACCOMPANIED. THE PERMIT SHALL SPECIFY THAT ACCESS IS LIMITED TO DESIGNATED AND SPECIFICALLY IDENTIFIED WATER BODIES WITHIN THE ADIRONDACK PARK.

D. THE APPLICATION PACKAGE SHALL BE PROCESSED IN THE REGION AS A ROUTINE PERMIT, WITH A TEN WORKDAY MAXIMUM PROCESSING TIME.

E. THE PERMIT MAY BE ISSUED FOR ANY TIME PERIOD, NOT TO EXCEED ONE YEAR FROM DATE OF ISSUE, EXCEPT THAT A PERMIT MAY BE ISSUED FOR A PERIOD

OF FIVE YEARS TO A QUALIFIED VETERAN WITH A DISABILITY EITHER CERTIFIED OR VISUALLY OBVIOUS AS PERMANENT.

F. THE PERMIT MAY BE RENEWED WITHOUT RECERTIFYING THE DISABILITY, PROVIDED THAT THE REQUEST FOR RENEWAL IS WITHIN THE TERM OF THE DISABILITY AS DESCRIBED IN THE ORIGINAL CERTIFICATION.

G. THE DEPARTMENT WILL ASSURE THAT RENEWAL APPLICATIONS ARE SENT TO PERMITTEES, OTHER THAN THOSE WITH A PERMANENT DISABILITY. THE REMINDER NOTICE WILL INCLUDE A QUESTIONNAIRE TO SURVEY THE EFFICIENCY OF THIS PERMIT SYSTEM. QUESTIONNAIRES WILL ALSO BE SENT ROUTINELY TO THOSE PERSONS WITH A FIVE-YEAR PERMIT.

4. A. THE DEPARTMENT SHALL DENY THE APPLICATION FOR A PERMIT IF THE APPLICANT DOES NOT MEET THE QUALIFYING REQUIREMENTS. THE APPLICANT MAY REAPPLY AT ANY TIME, ONCE THE CONDITIONS FOR RECEIVING THE PERMIT ARE MET.

B. THE APPLICANT MAY APPEAL THE DENIAL OF A PERMIT TO THE REGIONAL SUPERVISOR OF NATURAL RESOURCES FOR THE REGION IN WHICH THE PERMIT WAS ISSUED WITHIN THIRTY WORKDAYS OF THE DATE OF NOTIFICATION OF DENIAL. IF REQUESTED BY THE APPLICANT, THE REGIONAL SUPERVISOR OF NATURAL RESOURCES WILL SCHEDULE A MEETING BETWEEN THE APPLICANT AND THE REGIONAL LAND MANAGER. THE REGIONAL SUPERVISOR OF NATURAL RESOURCES SHALL RENDER A DECISION WITHIN TEN WORKDAYS OF RECEIPT OF THE APPLICANT'S APPEAL OR FROM THE DATE OF THE MEETING. THE APPLICANT MAY APPEAL THE DECISION OF THE REGIONAL SUPERVISOR OF NATURAL RESOURCES TO THE REGIONAL DIRECTOR WITHIN THIRTY WORKDAYS OF THE SECOND DENIAL. THE REGIONAL DIRECTOR WILL ISSUE A FINAL DECISION WITHIN FIFTEEN WORKDAYS OF RECEIPT OF THE APPEAL.

5. A. A PERMIT MAY BE SUSPENDED OR REVOKED AT ANY TIME DURING THE DURATION OF THE PERMIT IF THE CONDITIONS OF THE PERMIT ARE NOT MET, THE PERMITTEE AND/OR A COMPANION IS IN VIOLATION OF ANY PROVISIONS OF THIS SECTION OR OF ANY RULE OR REGULATION PROMULGATED BY THE DEPARTMENT OR THE ADIRONDACK PARK AGENCY OR ANY OTHER RELEVANT STATE OR FEDERAL LAWS. FOR MINOR VIOLATIONS, THE REGIONAL LAND MANAGER WILL FOLLOW THE PROCEDURES FOR THE SUSPENSION OF A PERMIT, AS DESCRIBED IN THIS SECTION. HOWEVER, FOR MAJOR VIOLATIONS, THE REGIONAL LAND MANAGER MAY REVOKE THE PERMIT IMMEDIATELY. THE PERMITTEE MAY APPEAL THE REVOCATION, FOLLOWING THE PROCEDURE FOR APPEALING A REVOCATION.

B. THE PERMIT HOLDER SHALL BE GIVEN NOTICE OF PENDING SUSPENSION BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SHALL BE ALLOWED TEN WORKDAYS FROM DATE OF RECEIPT TO CONFORM TO THE CONDITIONS OR PROVISIONS OF THE PERMIT. HOWEVER, IF THE SITUATION FOR COMPLIANCE IS DEEMED CRITICAL BY THE REGIONAL LAND MANAGER, HE OR SHE MAY IMMEDIATELY SUSPEND THE PERMIT. IF THE PERMIT IS SUSPENDED, NOTICE SHALL ALSO BE GIVEN THAT, UNLESS THE CONDITIONS OR PROVISIONS OF THE PERMIT ARE ADHERED TO, THE PERMIT SHALL BE REVOKED AT THE END OF THE TEN-WORKDAY SUSPENSION PERIOD.

C. THE REGIONAL LAND MANAGER SHALL INITIATE THE PROCEDURE TO SUSPEND THE PERMIT, PREPARING A MEMORANDUM CITING THE REASON FOR SUSPENSION TO THE REGIONAL SUPERVISOR OF NATURAL RESOURCES. THE REGIONAL SUPERVISOR OF NATURAL RESOURCES SHALL NOTIFY THE PERMITTEE IN WRITING OF THE IMPENDING SUSPENSION, THE REASON OR REASONS JUSTIFYING THE SUSPENSION AND THE REQUIREMENT OR REQUIREMENTS TO RECTIFY THE SITUATION.

D. IF A PERMITTEE FAILS TO COMPLY WITH THE CONDITIONS TO LIFT THE SUSPENSION, THE REGIONAL SUPERVISOR OF NATURAL RESOURCES SHALL PROCEED WITH NOTIFICATION OF THE REVOCATION OF THE PERMIT.

E. A PERMITTEE MAY APPEAL THE REVOCATION OF A PERMIT TO THE REGIONAL SUPERVISOR OF NATURAL RESOURCES FOR THE REGION IN WHICH THE PERMIT WAS ISSUED WITHIN THIRTY WORKDAYS OF THE DATE OF NOTIFICATION. IF REQUESTED BY A PERMITTEE, THE REGIONAL SUPERVISOR OF NATURAL RESOURCES WILL SCHED-

ULE A MEETING BETWEEN THE PERMITTEE AND THE REGIONAL LAND MANAGER. THE REGIONAL SUPERVISOR OF NATURAL RESOURCES SHALL RENDER A DECISION WITHIN TEN WORKDAYS OF RECEIPT OF THE PERMITTEE'S APPEAL OR FROM THE DATE OF THE MEETING. THE PERMITTEE MAY APPEAL THE DECISION OF THE REGIONAL SUPERVISOR OF NATURAL RESOURCES TO THE REGIONAL DIRECTOR WITHIN FIFTEEN WORKDAYS OF THE DENIAL OF THE APPEAL. THE REGIONAL DIRECTOR WILL ISSUE A FINAL DECISION WITHIN FIFTEEN WORKDAYS OF RECEIPT OF THE APPEAL.

F. A PERMITTEE SHALL NOT BE AUTHORIZED TO USE THE PERMIT DURING THE TERM OF THE SUSPENSION, REVOCATION OR APPEAL PROCESS.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.