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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 2, 2009

Introduced by M. of A. BRODSKY, GLICK, DINOWITZ, HOYT -- Multi-Sponsored by -- M. of A. CLARK, COLTON, DIAZ, GALEF, JOHN, ORTIZ, SEMINERIO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the parks, recreation and historic preservation law, in relation to the protection of old growth forests on state owned land and restricting forestry activities in state parks

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

Section 1. Legislative findings and intent. The legislature finds that the state of New York has a long tradition of providing protection for forests and land within and without the forest preserve. Land in New York state varies from very sensitive and endangered communities that must receive the strictest protection to less sensitive areas where any desired increased development should be targeted and clustered.

The legislature further finds that one of the most valuable and extremely rare endangered ecosystems in the state is "old growth forest", located in pockets that vary in size from two or three acre stands on Long Island to larger stands, including a stand in the Adirondacks measuring close to forty thousand acres. These stands of old growth forest possess ecological value as well as scenic, aesthetic, historic, and recreational values.

The legislature further finds that there is public value in old growth forests as a cathedral-like setting and a source of inspiration and art; as living historic monuments that still preserve the original forest landscape as it existed before European settlement times; and as a pristine place for recreation and personal renewal.

Therefore, it is hereby declared to be the policy of the state and the intention of this legislation to fully protect all old growth forests by preventing both logging and other human disturbances, including prevent-

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

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ing any damage to or removal of any trees or vegetation located within old growth forests on state owned land.

S 2. The environmental conservation law is amended by adding a new section 9-1505 to read as follows:

S 9-1505. PROTECTION OF OLD GROWTH FORESTS.

1. AS USED IN THIS SECTION, THE TERM "OLD GROWTH FOREST" MEANS ANY NATURAL FOREST OR STAND OF TREES: WITH VIRTUALLY NO VISIBLE SIGNS OF HUMAN LAND USE SUCH AS CUT STUMPS, ORCHARD TREES, ROCK WALLS, OR OLD FOUNDATIONS; CONTAINING A MINIMUM OF TWENTY-FIVE PERCENT OF TREES IN THE FOREST CANOPY THAT ARE MORE THAN ONE HUNDRED YEARS IN AGE; AND POSSESSING MOST OF THE FOLLOWING STRUCTURAL CHARACTERISTICS:

(A) THE STAND IS COMPOSED OF A NATURAL COMMUNITY OF TREES AND PLANTS MAKING UP THE GROUND LAYER, UNDERSTORY, AND THE CANOPY LAYER;

(B) THERE IS NO PAST EVIDENCE OF LARGE-SCALE CLEAR-CUT LOGGING, CLEARING FOR AGRICULTURE, OR ANY OTHER FORM OF DEFORESTATION. EVIDENCE OF MINOR CUTTING OR SELECTIVE LOGGING STILL ALLOWS FOR A FOREST TO BE CLASSIFIED AS OLD GROWTH IF THE DAMAGE STILL ALLOWS THE FOREST TO CONTINUE THE NATURAL FUNCTIONING OF THE FOREST ECOSYSTEM;

(C) THE MINIMUM OF TWENTY-FIVE PERCENT OF THE MATURE TREES THAT MAKE UP THE FOREST CANOPY (TOP LAYER) ARE MORE THAN ONE HUNDRED YEARS IN AGE IN THE MIDDLE AND LOWER ALTITUDES AND EIGHTY YEARS IN AGE AT ALTITUDES ABOVE TWENTY-FIVE HUNDRED FEET, WHEREAT THEY ARE RECOGNIZABLE FROM THEIR ASYMMETRICAL SHAPES, RELATIVELY LONG TRUNKS FREE OF BRANCHES, OLD BARK CHARACTERISTICS, SIGNS OF HEARTWOOD DECAY, LARGE PROMINENT ROOT STRUCTURES, FLATTENED CROWNS WITH PROTRUDING DEAD LIMBS, AND LARGE, THICK LIMBS AND TRUNKS OFTEN SHOWING A TWIST THAT DEVELOPS PROGRESSIVELY WITH AGE;

(D) CRISSCROSSING, MOSS COVERED LOGS IN ALL STAGES OF DECOMPOSITION, INCLUDING IN AND ACROSS STREAM BEDS;

(E) STANDING DEAD TREES;

(F) CANOPY GAPS, LARGE AND SMALL, WHICH HAVE FORMED FROM TREES THAT HAVE FALLEN;

(G) UNDULATING FOREST FLOOR EXPRESSED IN RANDOMLY SCATTERED PITS AND MOUNDS WHERE TREES HAVE FALLEN OVER AND DECOMPOSED;

(H) UNDISTURBED SOILS WITH A RELATIVELY THICK HUMUS LAYER;

(I) ABUNDANT UNDERSTORY SPECIES; AND

(J) A MINIMUM SIZE OF A STAND OF ONE ACRE.

2. NO PERSON SHALL CUT OR REMOVE ANY TREES OR VEGETATION LOCATED WITHIN AN OLD GROWTH FOREST ON LAND OWNED BY THE STATE IF THE OLD GROWTH FOREST HAS BEEN SO IDENTIFIED BY THE DEPARTMENT PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

3. THE DEPARTMENT SHALL CONDUCT A STATEWIDE INVENTORY OF ALL OLD GROWTH FORESTS ON LAND OWNED BY THE STATE, WITH PRIORITY GIVEN TO PROPERTIES WHERE CUTTING OF TREES IS CONDUCTED AND TO STANDS OF TWENTY ACRES OR MORE. THIS REPORT, INCLUDING MAPS OF AN APPROPRIATE SCALE, SHALL BE SUBMITTED TO THE LEGISLATURE AND THE GOVERNOR ONE YEAR AFTER THIS SECTION SHALL HAVE BECOME A LAW. THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC, UPON REQUEST, AND SHALL PLACE IN ALL REGIONAL OFFICES OF THE DEPARTMENT, THE STATEWIDE INVENTORY OF OLD GROWTH FORESTS.

S 3. Paragraph (b) of subdivision 6 of section 71-0703 of the environmental conservation law, as amended by chapter 602 of the laws of 2003, is amended to read as follows:

(b) In addition to any other penalty provided by law, a person who violates section 9-1501 OR 9-1505 of this chapter shall be liable for a civil penalty of two hundred fifty dollars per tree or treble damages or both, based on the stumpage value of such tree or trees. Where the order

or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the state constitution or law.

S 4. The parks, recreation and historic preservation law is amended by adding a new section 13.08 to read as follows:

S 13.08 FORESTRY ACTIVITIES RESTRICTED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE CUTTING OR SELLING OF TIMBER AND LOGS FROM LANDS WITHIN ANY STATE PARK, EXCEPT AS IS NECESSARY FOR THE PROPER DEVELOPMENT OF THE PARKS, INCLUDING AND LIMITED TO THE SAFETY OF PARK VISITORS, THE CONSTRUCTION AND MAINTENANCE OF PARK-RELATED FACILITIES, OR THE CONTROL OF DISEASE, INFESTATION, OR FIRE, IS PROHIBITED.

S 5. This act shall take effect immediately; provided that section three of this act shall take effect on the first of March next succeeding the date on which it shall have become a law.