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

5853

2009-2010 Regular Sessions

I N  A S S E M B L Y

February 20, 2009

Introduced by M. of A. BRODSKY, PARMENT, HOYT, DINOWITZ -- Multi-Sponsored by -- M. of A. COLTON -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to conduct constituting violations of and penalties for violations of article 9 of such law; and to amend the environmental conservation law, the general municipal law and the town law, in relation to the practice of forestry

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

Section 1. Subdivision 18 of section 1-0303 of the environmental conservation law, as amended by chapter 448 of the laws of 2005, is amended to read as follows:

18. "Person" shall mean any individual, public or private corporation, LIMITED LIABILITY COMPANY, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever[. Provided]; PROVIDED, however, that for purposes of sections 3-0109 through 3-0115 inclusive, and sections 3-0305 and 3-0307 of article 3; articles [9,] 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; articles 43, 45 and 47; sections 57-0121 and 57-0123 of article 57; and titles 1 through 13 inclusive and title 33 of article 71 applicable to these provisions, "person" means any individual, firm, co-partnership, LIMITED LIABILITY COMPANY, association or corporation other than the state [and] OR a "public corporation".

S 2. Subdivision 7 of section 9-0101 of the environmental conservation law is amended to read as follows:

7. "Person" means any individual, [firm, co-partnership, association or corporation, other than the state or a public corporation, as the latter is defined in subdivision 1 of section 3 of the General Corporation Law] PUBLIC OR PRIVATE CORPORATION, LIMITED LIABILITY COMPANY,

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

LBD08675-01-9

POLITICAL SUBDIVISION, GOVERNMENT AGENCY, DEPARTMENT OR BUREAU OF THE STATE, MUNICIPALITY, INDUSTRY, CO-PARTNERSHIP, ASSOCIATION, FIRM, TRUST, ESTATE, OR ANY OTHER LEGAL ENTITY WHATSOEVER; EXCEPT THAT "PERSON" SHALL NOT INCLUDE ANY PERSON WHO ACTS PURSUANT TO LAWFUL AUTHORIZATION OF THE DEPARTMENT, AS DEFINED IN SUBDIVISION ELEVEN OF THIS SECTION, OR ANY POLITICAL SUBDIVISION, GOVERNMENT AGENCY, DEPARTMENT OR BUREAU OF THE STATE, MUNICIPALITY, OR AGENT OF SUCH GOVERNMENTAL ENTITIES WHO ACTS IN RESPONSE TO A BONA FIDE EMERGENCY; NOR SHALL "PERSON" INCLUDE, FOR THE PURPOSES OF SECTION 9-0305 OF THIS ARTICLE, THE STATE OR ANY PUBLIC CORPORATION. FOR PURPOSES OF THIS SUBDIVISION, "BONA FIDE EMERGENCY" SHALL MEAN AN EVENT WHICH PRESENTS AN IMMEDIATE THREAT TO LIFE, HEALTH, PROPERTY, OR NATURAL RESOURCES.

S 3. Section 9-0101 of the environmental conservation law is amended by adding three new subdivisions 10, 11 and 12 to read as follows:

10. "STATE LAND" MEANS ANY LAND OWNED BY THE STATE, UNDER THE JURISDICTION OF THE DEPARTMENT, AND DESCRIBED IN THIS ARTICLE.

11. "LAWFUL AUTHORIZATION" WHEN APPLIED TO ACTIVITIES CONDUCTED ON STATE LAND GOVERNED BY THIS ARTICLE, SHALL MEAN A WRITTEN PERMIT OR APPROVAL FROM THE DEPARTMENT SPECIFYING THE ACTIVITY PERMITTED, THE SITE ON WHICH SUCH ACTIVITY MAY BE CONDUCTED, AND THE REASON FOR PERMITTING THE ACTIVITY.

12. "STRUCTURE" MEANS ANY OBJECT CONSTRUCTED, INSTALLED, ERECTED, OR PLACED ON, ABOVE, OR BELOW THE SURFACE OF LAND OR WATER TO FACILITATE LAND USE, INCLUDING BUT NOT LIMITED TO BRIDGES, ROADWAYS, BUILDINGS, CABINS, MOBILE HOMES, CAMPERS, TOWERS, POLES, FENCES, TELEPHONE, ELECTRICAL AND GAS LINES, SIGNS, AND FIXTURES, ADDITIONS, AND ALTERATIONS THERETO.

S 4. Subdivision 15 of section 9-0105 of the environmental conservation law is amended to read as follows:

15. Make rules and regulations and issue REVOCABLE permits for the temporary use of the forest preserve.

S 5. Subdivisions 2 and 4 of section 9-0303 of the environmental conservation law are amended to read as follows:

2. Structures. No [building] STRUCTURE shall be CONSTRUCTED, erected, INSTALLED, PLACED, OR used or maintained upon state lands except under permits from the department; PROVIDED, HOWEVER, THAT ANY PERMIT FOR THE USE OF FOREST PRESERVE LANDS SHALL BE ISSUED ONLY IN CONFORMANCE WITH RULES AND REGULATIONS PROMULGATED PURSUANT TO SUBDIVISION 15 OF SECTION 9-0105 OF THIS ARTICLE.

4. Deposit rubbish. No person shall deposit or leave on state lands any rubbish or other waste material, OR ENTER UPON ANY STATE LANDS WITH THE INTENT TO DO SO. IT SHALL BE A REBUTTABLE PRESUMPTION THAT ANY PERSON FOUND ON STATE LANDS, OTHER THAN WHILE IN ACTUAL OPERATION OF A MOTOR VEHICLE ON A HIGHWAY, AS DEFINED IN SECTION ONE HUNDRED EIGHTEEN OF THE VEHICLE AND TRAFFIC LAW, ON STATE LANDS, WHO IS IN POSSESSION OF FIFTY POUNDS OR MORE OF SOLID WASTE, OR FIVE OR MORE WASTE TIRES, OR TEN GALLONS OR MORE OF REGULATED WASTE OR HAZARDOUS WASTE, AS EACH SUCH TERM IS DEFINED IN ARTICLE TWENTY-SEVEN OF THIS CHAPTER, IS ON STATE LAND FOR THE PURPOSE OF ILLEGAL DUMPING.

S 6. Legislative findings and purposes. The forest resources of this state have increased in size and quality in every decade since the turn of the 20th century. Today, nearly two-thirds of the state's land cover, 18.5 million acres, is forestland, and the quality and quantity of forests found today continues to improve. At the same time, this remarkable resource has provided clean water, a diversity of habitat for wild-

life, abundant outdoor recreational activities, and a wide-range of wood and paper products.

The forest-based economy in New York provides employment for over 122,000 people, 40% of which jobs are tied to wood product manufacturing. The practice of forestry, including the manufacture of wood and paper products and nurturing, harvesting, and management of these forests, is an important way of life that has been sustained for generations in many areas of the state. It also provides for the range of goods and forest conditions that are desired by all residents of the state.

It is then the general purpose of sections eleven through fourteen of this act (1) to maintain the pursuit of forestry practices and to permit the continuation of forestry within the state, (2) to protect the existence and operation of existing forest activities, (3) to encourage the initiation and expansion of additional forestry businesses, (4) to discourage inadvertent impediments to the practice of forestry that may result from well meaning but poorly constructed local ordinances concerning forestry activities, and (5) to improve understanding of the economic and environmental contributions that well managed forests bring to the state.

S 7. The environmental conservation law is amended by adding a new section 9-0817 to read as follows:

S 9-0817. COOPERATION WITH LOCAL GOVERNMENTS AND LANDOWNERS.

TO ENSURE THE CONTINUED VIABILITY OF THE STATE'S FOREST RESOURCES AND THE ENVIRONMENTAL BENEFITS THAT THEY PROVIDE, THE DEPARTMENT SHALL COOPERATE WITH LANDOWNERS WHOSE FOREST STEWARDSHIP HAS FOSTERED THE GENERAL PURPOSES OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE THAT ADDED THIS SECTION AND WITH LOCAL GOVERNMENTS IN THEIR EFFORTS TO PROMOTE THE PRESERVATION OF SUCH RESOURCES THROUGH LOCAL REGULATION OF FORESTRY PRACTICES. SUCH COOPERATIVE EFFORTS SHALL INCLUDE:

1. AN OWNER OF FOREST LAND WHO IS A "QUALIFYING OWNER" PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE-N-1 OF ARTICLE TWELVE-B OF THE GENERAL MUNICIPAL LAW MAY REQUEST THE COMMISSIONER TO REVIEW AN EXISTING OR PROPOSED LAW OR ORDINANCE WHICH SUCH LANDOWNER ALLEGES HAS UNREASONABLY RESTRICTED OR WILL UNREASONABLY RESTRICT THE PRACTICE OF FORESTRY.

2. THE COMMISSIONER SHALL REVIEW THE PROPOSAL AS IT WOULD AFFECT THE PRESENT AND FORMER FORESTRY MANAGEMENT PRACTICES IN THE TOWN OR COUNTY, AS SUCH PROPOSAL WOULD AFFECT THE LONG TERM VIABILITY OF FORESTRY AND ITS CONTRIBUTIONS TO THE ECONOMIC AND GENERAL WELL-BEING OF THE AREA AND AS SUCH PROPOSAL AND ANY MODIFICATIONS THEREOF WOULD IMPACT THE ATTAINMENT OF ANY OTHER RECOGNIZED PURPOSES FOR WHICH A MUNICIPALITY MAY UNDERTAKE SUCH ACTION, AND SHALL RECOMMEND APPROVAL, MODIFICATION, OR DISAPPROVAL THEREOF TO PROMOTE THE LONG TERM VIABILITY OF FORESTRY IN SUCH COUNTY OR TOWN.

3. UPON THE COMPLETION OF THE REVIEW BY THE COMMISSIONER, THE COUNTY OR TOWN SHALL ACT IN ACCORDANCE WITH THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE-N-1 OF ARTICLE TWELVE-B OF THE GENERAL MUNICIPAL LAW IN THE ENACTMENT OF SUCH LAW OR ORDINANCE.

4. THE COMMISSIONER MAY WITHOUT PETITION UNDERTAKE A REVIEW OF ANY LAWS OR ORDINANCES IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION AND MAKE RECOMMENDATIONS CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

S 8. Subdivision 2 of section 96-b of the general municipal law, as added by chapter 686 of the laws of 1978, is amended to read as follows:

2. In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws or regulations or by local laws and

regulations, the local legislative body of any county, city, town, or village is hereby empowered to provide for the protection and conservation of trees and related vegetation. Such legislative body may require appropriate conditions applicable to any activity involving the removal or destruction of trees or the substantial alteration of grade level around trees may include, where appropriate, requirements that the activity be done as specified in an approved landscape plan and that the removed trees be replaced by the planting of the same or alternate species of trees, and may provide, in connection therewith, required plantings for screening purposes. Such regulations, special conditions, and restrictions, adopted in the exercise of the police power, shall be reasonable and appropriate to the purpose. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO IMPAIR ANY RIGHTS THAT A LANDOWNER MAY HAVE TO SEEK REVIEW OF THE PROPOSED MUNICIPAL ACTION PURSUANT TO THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE-N-1 OF ARTICLE TWELVE-B OF THIS CHAPTER. The municipality may require the posting of a performance bond to [assure] ENSURE compliance with this section. All charges and expenses incurred under this section by a town shall be a charge upon the taxable property of that part of the town outside any incorporated village.

S 9. Article 12-B of the general municipal law is amended by adding a new section 239-n-1 to read as follows:

S 239-N-1. REFERRAL OF CERTAIN PROPOSED LAWS AND ORDINANCES TO THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION; REPORT THEREON; FINAL ACTION. 1. ANY QUALIFYING OWNER OF FORESTLAND OR THE AGENT OF SUCH PERSON SHALL HAVE THE RIGHT HEREBY GRANTED TO PETITION THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION REGARDING THE APPLICATION OF ANY LOCAL LAW, ORDINANCE, RULE, OR REGULATION THAT IMPAIRS A LANDOWNER IN THE PRACTICE OF FORESTRY.

2. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) THE TERM "PROPOSED" SHALL BE DEEMED TO INCLUDE ONLY THOSE LOCAL LAWS OR ORDINANCES PROPOSED BY A COUNTY OR TOWN WHICH RESTRICT THE PRACTICE OF FORESTRY OR THE ENGAGING IN GENERALLY ACCEPTED FOREST PRACTICES.

(B) THE TERM "REFERRING BODY" SHALL MEAN THE TOWN OR COUNTY BODY RESPONSIBLE FOR FINAL ACTION ON PROPOSED ACTIONS SUBJECT TO THIS SECTION.

(C) THE TERM "FULL STATEMENT OF SUCH PROPOSED ACTION" SHALL MEAN ALL MATERIALS REQUIRED BY AND SUBMITTED TO THE REFERRING BODY AS ARE REQUIRED TO ENACT THE PROPOSED ACTION, INCLUDING A COMPLETED ENVIRONMENTAL ASSESSMENT FORM AND ALL OTHER MATERIALS REQUIRED BY SUCH REFERRING BODY IN ORDER TO MAKE ITS DETERMINATION OF SIGNIFICANCE PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW AND ITS IMPLEMENTING REGULATIONS. WHEN THE PROPOSED ACTION REFERRED IS THE ADOPTION OR AMENDMENT OF A ZONING ORDINANCE OR LOCAL LAW, "FULL STATEMENT OF SUCH PROPOSED ACTION" SHALL ALSO INCLUDE THE COMPLETE TEXT OF THE PROPOSED ORDINANCE OR LOCAL LAW AS WELL AS ALL EXISTING PROVISIONS TO BE AFFECTED THEREBY. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, ANY REFERRING BODY MAY AGREE WITH THE COMMISSIONER AS TO WHAT SHALL CONSTITUTE A "FULL STATEMENT" FOR ANY OR ALL OF THOSE PROPOSED ACTIONS WHICH SUCH REFERRING BODY IS AUTHORIZED TO ACT UPON.

(D) THE TERM "RECEIPT" SHALL MEAN DELIVERY OF A FULL STATEMENT OF SUCH PROPOSED ACTION, AS DEFINED IN THIS SECTION, IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION WITH RESPECT TO PERSON, PLACE, AND PERIOD OF TIME FOR SUBMISSION.

(E) THE TERM "EXTRAORDINARY VOTE" SHALL MEAN, IN THE CASE OF A TOWN, A VOTE OF A MAJORITY OF THE MEMBERS OF THE BOARD OF SUCH TOWN PLUS ONE, AND IN THE CASE OF A COUNTY, A VOTE OF TWO-THIRDS OF THE MEMBERS OF THE GOVERNING BODY OF SUCH COUNTY.

(F) THE TERM "QUALIFYING OWNER" SHALL MEAN THE OWNER OF FORESTLAND THAT IS IN COMPLIANCE WITH THE BEST MANAGEMENT PRACTICES FOR FORESTLAND, AS MAY BE ESTABLISHED FROM TIME TO TIME BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, AND WHO ACCOMMODATES ENDANGERED AND THREATENED ANIMALS AND PLANTS, AND WHO IS IN COMPLIANCE WITH THE ENVIRONMENTAL CONSERVATION LAW AND THE RULES, REGULATIONS, AND ADMINISTRATIVE DIRECTIVES ESTABLISHED THEREUNDER, INCLUDING BUT NOT LIMITED TO ARTICLES NINE, ELEVEN, FIFTEEN, TWENTY-THREE AND TWENTY-FOUR OF THE ENVIRONMENTAL CONSERVATION LAW, AND WHO DEMONSTRATES SOUND MANAGEMENT TO ENSURE THE CONTINUING PRODUCTION OF A MERCHANTABLE FOREST CROP.

(G) THE TERM "FORESTLAND" SHALL MEAN LAND THAT HAS BEEN EXCLUSIVELY DEVOTED TO FOREST CROP PRODUCTION THROUGH NATURAL REGENERATION OR THROUGH FORESTATION, CONTAINS NO DWELLINGS, AND IS STOCKED WITH A STAND OF GREATER THAN FIFTY PERCENT FOREST TREES SUFFICIENT TO PRODUCE A MERCHANTABLE CROP.

(H) THE TERM "DWELLING" SHALL MEAN ANY BUILDING OR STRUCTURE OR PORTION THEREOF WHICH IS OCCUPIED IN WHOLE OR IN PART AS THE HOME, RESIDENCE, OR SLEEPING PLACE FOR ONE OR MORE PERSONS.

(I) THE TERM "MERCHANTABLE FOREST CROP" SHALL MEAN TIMBER OR PULPWOOD, INCLUDING VENEER BOLTS, SAWLOGS, POLES, POSTS, AND FUEL WOOD THAT IS PRODUCED ON FORESTLAND AND HAS VALUE IN THE MARKETPLACE AND MAY BE SOLD.

3. REFERRAL OF PROPOSED ACTIONS. ANY TOWN OR COUNTY SHALL, BEFORE TAKING FINAL ACTION ON PROPOSED ACTIONS THAT HAVE BEEN THE SUBJECT OF A PETITION PURSUANT TO SUBDIVISION ONE OF THIS SECTION, DEFER ACTION PENDING THE REVIEW OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION.

4. COMMISSIONER'S REVIEW OF PROPOSED ACTIONS; RECOMMENDATION, REPORT. (A) THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL REVIEW ANY PROPOSED LAW OR ORDINANCE AND SHALL RECOMMEND APPROVAL, MODIFICATION, OR DISAPPROVAL OF THE PROPOSED LAW OR ORDINANCE. IN MAKING THE DETERMINATION PROVIDED FOR IN THIS SECTION, THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL EXAMINE THE LANGUAGE OF THE LOCAL LAW, ORDINANCE, RULE, OR REGULATION, THE BURDEN THAT IT WOULD IMPOSE ON THE CONTINUATION OF SOUND FOREST PRACTICES IN THE MUNICIPALITY, THE LEGITIMATE OBJECTIVE THAT THE LAW, ORDINANCE, RULE, OR REGULATION WAS DESIGNED TO ACHIEVE, AND OTHER, LESS INTRUSIVE MEANS AVAILABLE TO ACHIEVE SUCH OBJECTIVE, AND MAKE THE DETERMINATION REQUIRED BY THIS SECTION.

(B) THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER DESIGNEE SHALL HAVE THIRTY DAYS AFTER RECEIPT OF A FULL STATEMENT OF SUCH PROPOSED ACTION, OR SUCH LONGER PERIOD AS MAY HAVE BEEN AGREED UPON BY THE COMMISSIONER AND THE REFERRING BODY, TO REPORT HIS OR HER RECOMMENDATIONS TO THE REFERRING BODY, ACCOMPANIED BY A STATEMENT OF THE REASONS FOR SUCH RECOMMENDATIONS. IF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION FAILS TO REPORT WITHIN SUCH PERIOD, THE REFERRING BODY MAY TAKE FINAL ACTION ON THE PROPOSED ACTION WITHOUT SUCH REPORT. ANY COMMISSIONER'S REPORT TIMELY RECEIVED BY THE REFERRING BODY SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISION FIVE OF THIS SECTION.

5. EXTRAORDINARY VOTE UPON RECOMMENDATION OF MODIFICATION OR DISAPPROVAL. IF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION RECOMMENDS MODIFICATION OR DISAPPROVAL OF A PROPOSED ACTION, THE REFERRING BODY SHALL NOT ACT CONTRARY TO SUCH RECOMMENDATION EXCEPT BY AN EXTRAORDINARY VOTE.

6. REPORT OF FINAL ACTION. WITHIN THIRTY DAYS AFTER FINAL ACTION, THE REFERRING BODY SHALL FILE A REPORT OF THE FINAL ACTION IT HAS TAKEN WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION. A REFERRING BODY WHICH ACTS CONTRARY TO A RECOMMENDATION OF MODIFICATION OR DISAPPROVAL OF A PROPOSED ACTION SHALL SET FORTH THE REASONS FOR THE CONTRARY ACTION IN SUCH REPORT.

S 10. Section 263 of the town law, as amended by chapter 602 of the laws of 2003, is amended to read as follows:

S 263. Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar AND WIND energy systems and equipment and access to sunlight necessary therefor; to facilitate the practice of forestry; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

S 11. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.