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

4019

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. WINNER -- 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 the issuance of permits for the use of fireworks and pyrotechnics on state property

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

Section 1. Subdivision 19 of section 156 of the executive law, as renumbered by chapter 615 of the laws of 2006, is renumbered subdivision 20 and a new subdivision 19 is added to read as follows:

19. ISSUE PERMITS AND ENFORCE THE PROVISIONS OF ARTICLE FOUR HUNDRED FIVE OF THE PENAL LAW FOR THE PUBLIC DISPLAY OF FIREWORKS AND INDOOR PYROTECHNICS ON OR WITHIN STATE PROPERTY.

S 2. Section 405.00 of the penal law, subdivision 1 as amended by chapter 661 of the laws of 1972 and subdivision 3-a as added by chapter 151 of the laws of 2002, is amended to read as follows:

S 405.00 Permits for public displays of fireworks.

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section, which [agency in the territory within a state park shall be the state agency having custody and control thereof] ON OR WITHIN STATE PROPERTY SHALL BE THE OFFICE OF FIRE PREVENTION AND CONTROL, in the territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed, in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof, in a village shall be an officer designated for the purpose by the board of trustees thereof and in the territory of a town outside of villages

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

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shall be an officer designated for the purpose by the town board thereof.

2. Permits for public displays. Notwithstanding the provisions of section 270.00, the permit authority of [a] state [park] PROPERTY, county park, city, village or town may upon application in writing, grant a permit for the public display of fireworks by municipalities, fair associations, amusement parks or organizations of individuals. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display.

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

(c) The exact location planned for the display.

(d) The age, experience and physical characteristics of the persons who are to do the actual discharging of the fireworks.

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

(f) The manner and place of storage of such fireworks prior to the display.

(g) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

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

3. Applications for permits. All applications for permits for the public display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired shall be at least two hundred feet from the nearest permanent building, public highway or railroad or other means of travel and at least fifty feet from the nearest above ground telephone or telegraph line, tree or other overhead obstruction, that the audience at such display shall be restrained behind lines at least one hundred and fifty feet from the point at which the fireworks are discharged and only persons in active charge of the display shall be allowed inside these lines, that all fireworks that fire a projectile shall be so set up that the projectile will go into the air as nearby as possible in a vertical direction, unless such fireworks are to be fired from the shore of a lake or other large body of water, when they may be directed in such manner that the falling residue from the deflagration will fall into such lake or body of water, that any fireworks that remain unfired after the display is concluded shall be immediately disposed of in a way safe for the particular type of fireworks remaining, that no fireworks display shall be held during any wind storm in which the wind reaches a velocity of more than thirty miles per hour, that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two [sodaacid or other] approved type fire extinguishers [of at least two and one-half gallons capacity each] shall be kept at as widely separated points as possible within the actual area of the display. The STATE FIRE ADMINISTRATOR OR THE legislative body of a [state park,] county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transfera-

ble. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

3-a. Notwithstanding the provisions of subdivision three of this section, no permit may be issued to conduct a public display of fireworks upon any property where the boundary line of such property is less than five hundred yards from the boundary line of any property which is owned, leased or operated by any breeder as defined in subdivision four of section two hundred [forty-four] FIFTY-ONE of the racing, pari-mutuel wagering and breeding law.

4. Bonds. Before granting and issuing a permit for a public display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is [a] state [park] PROPERTY, county park, city, village or town, or from the person to whom a contract for such display shall be awarded, in a sum to be fixed by the permit authority, which, however, shall not be less than five thousand dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his agents, employees, contractors or subcontractors. Such bond shall run to the state [park], county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes herein provided.

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

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

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

4. Bonds. Before granting and issuing a permit for a use of pyrotechnics as provided in this section, the permit authority shall require an

adequate bond from the applicant therefor, unless such applicant is [a] state [park] PROPERTY, county park, city, village, or town, or from the person to whom a contract for such use shall be awarded, in a sum to be fixed by the permit authority, which, however, shall not be less than five hundred thousand dollars, conditioned for the payment of all damages which may be caused to a person or persons or to property by reason of the use so permitted and arising from any acts of the permittee, his or her agents, employees, contractors, or subcontractors. Such bond shall run to the owner of the facility for which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors, or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes herein provided.

S 4. This act shall take effect immediately.