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

4953

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the environmental conservation law, the general municipal law, the real property tax law and the town law, in relation to the practice of sustainable forestry

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

Section 1. Legislative findings and purposes. Almost two-thirds of New York State is covered with forest, with eighteen million eight hundred thousand acres of forest covering sixty-two percent of the state. Through constitutional protection, New York State has reserved approximately three million acres of forest in the Adirondack and Catskill parks. Approximately fifteen million eight hundred thousand acres remain available for active economic use. Ninety-two percent of this land is privately owned and the remaining eight percent is publicly owned. It is this private forest that provides economic and commercial benefits to the state.

The practice of sustainable forestry on the available forest land of the state constitutes a beneficial and desirable use of New York's private forest resource. Forestry and its related activities involve recreation, tourism and industry, including manufacturing. The income generated by these activities accounts for billions of dollars of value added to the economy of New York.

The forest based economy in New York provides employment. Forty percent of these jobs are directly related to wood and manufacturing. This generates payrolls in excess of one billion seven hundred eighty-nine million dollars, of which one billion one hundred thirty-three million dollars is attributable to manufacturing. According to recent studies, wood based manufacturing alone contributed two billion four hundred million dollars per year in gross state product. Shipments of products attributable to wood were greater than seven billion eight

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

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hundred million dollars. Forest based activity in New York accounts for two percent of total employment and one percent of the total payroll of the state. Additionally, the paper and allied products industries contribute an additional two billion three hundred million dollars in payroll to their forty thousand employees.

Forest management when sustainable is uniquely compatible with the environment and is essential in ensuring that New Yorkers have clean air and water for future generations. Underlying the practice of sustainable forestry is the continuous growing, planting, nurturing, harvesting, transporting and processing of forest products. These activities recognize the forest as a renewable resource and contribute to the health of the forest through new growth, the creation of wildlife habitat and recreational resources. Beautiful landscapes and a working forest are the results of the practice of sustainable forestry.

It is the purpose of this act to recognize the practice of sustainable forestry within the state, to safeguard the existence and operation of sustainable forestry activities and to encourage such forestry activities. In recognition of the fact that there are practices and activities which are inherent to and necessary for the practice of sustainable forestry, the legislature finds and determines that it is necessary to take reasonable steps to ensure that such sustainable practices are allowed.

The legislature declares the necessity for this act to ensure that proper stewardship over the privately owned forest lands of the state contribute to the quality of life and continue to exist for the years to come so that future generations of New Yorkers can continue to enjoy quality forests.

S 2. Subdivision 3, paragraph d of subdivision 4, paragraphs b and d of subdivision 9 and subdivision 11 of section 301 of the agriculture and markets law, subdivision 3 as amended by chapter 797 of the laws of 1992, paragraph d of subdivision 4 as amended by chapter 445 of the laws of 2002, paragraph b of subdivision 9 as amended by chapter 440 of the laws of 1993, paragraph d of subdivision 9 as amended by chapter 536 of the laws of 2008, and subdivision 11 as separately amended by chapters 511 and 536 of the laws of 2008, are amended to read as follows:

3. "Farm woodland" means land used for the production for sale AT RETAIL OR WHOLESALE of [woodland products] TREES AND TIMBER, including but not limited to logs, lumber, NUTS, BOUGHS, BARK, CHIPS, posts and firewood. Farm woodland shall not include land used to produce Christmas trees, WOODY BIOMOSS, MAPLE SAP or land used for the processing or retail merchandising of [woodland] WOOD products, EXCEPT AS PROVIDED IN THIS ARTICLE.

d. Farm woodland [which is part of land] which is [qualified] ELIGIBLE for an agricultural assessment, [provided, however, that such farm woodland attributable to] WHICH FOR THIS PURPOSE SHALL INCLUDE any separately described and assessed parcel [shall] THAT DOES not exceed [fifty] ONE HUNDRED acres.

b. Woodland products from ELIGIBLE farm woodland [eligible to receive an agricultural assessment,] not to exceed [two] FIVE thousand dollars annually;

d. Maple syrup OR SUGAR processed from maple sap [produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation]. SUCH SYRUP OR SUGAR MUST BE PROCESSED IN A FACILITY LOCATED ON FARMLAND OR FARM WOODLAND;

11. "Farm operation" means the land, FARM WOODLAND, SAP AND SYRUP BOILING HOUSES and on-farm buildings, equipment, manure processing and

handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock [and] OR livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, "timber processing" as defined in subdivision fourteen of this section and "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section. For purposes of this section, such farm operation shall also include the production, management and harvesting of "farm woodland", as defined in subdivision three of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

S 3. The environmental conservation law is amended by adding a new section 9-0817 to read as follows:

S 9-0817. RIGHT TO SUSTAINABLE FOREST PRACTICES.

1. ANY OWNER OF FOREST LAND IN EXCESS OF FIFTEEN ACRES WHICH HAS A SUSTAINABLE FOREST PLAN APPROVED BY THE DEPARTMENT OR IS AN ELIGIBLE TRACT UNDER SECTION FOUR HUNDRED EIGHTY, FOUR HUNDRED EIGHTY-A OR FOUR HUNDRED EIGHTY-B OF THE REAL PROPERTY TAX LAW SHALL BE ENTITLED TO THE PROTECTION OF THE RIGHT TO SUSTAINABLE FOREST PRACTICES REVIEW.

2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE STATE FOREST PRACTICE BOARD, ISSUE OPINIONS UPON REQUEST FROM ANY PERSON AS TO WHETHER A PARTICULAR FORESTRY PRACTICE IS SUSTAINABLE AND ENVIRONMENTALLY ACCEPTABLE.

3. SUSTAINABLE FOREST PRACTICES AND ENVIRONMENTALLY ACCEPTABLE FORESTRY PRACTICES REFER TO THOSE PRACTICES NECESSARY FOR CONTINUED FOREST GROWTH, PRODUCTION, PREPARATION AND MARKETING OF FOREST PRODUCTS CARRIED OUT IN A MANNER THAT COMPLIES WITH THIS CHAPTER AND WOULD ALLOW THE LAND TO REMAIN CAPABLE OF ONGOING FOREST PRODUCT PRODUCTION.

4. SUSTAINABLE FOREST PLAN IS A TWENTY-YEAR PLAN DEVELOPED BY THE LAND OWNER AND A FORESTER THAT EVALUATED THE PROPOSED TRACT OF LAND FOR THE PLANTING OF TREES, MANAGEMENT OF TREES AND HARVEST OF TREES IN A SUSTAINABLE MANNER. THE PLAN MUST BE APPROVED BY THE DEPARTMENT, IMPLEMENTED BY THE LAND OWNER AND RENEWED EVERY TEN YEARS.

5. IN THOSE CASES WHERE THE COMMISSIONER DETERMINES THAT A MUNICIPAL RULE, REGULATION, OR ORDINANCE IS IN CONFLICT WITH A LANDOWNER'S EXERCISE OF A FOREST PRACTICE THAT IS SUSTAINABLE AND ENVIRONMENTALLY ACCEPTABLE, A COPY OF THE DETERMINATION SHALL BE SENT TO THE LANDOWNER AND THE AFFECTED MUNICIPALITY. THE MUNICIPALITY SHALL HAVE NINETY DAYS TO AMEND OR MODIFY THE RULE, REGULATION OR ORDINANCE TO COMPLY WITH THE TERMS OF THE COMMISSIONER'S DECISION.

IF THE MUNICIPALITY DOES NOT ACT WITHIN THE NINETY-DAY PERIOD, THE PERSON WHO REQUESTED THE DETERMINATION MAY BRING A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES AGAINST THE MUNICIPALITY TO ENFORCE COMPLIANCE WITH THE TERMS OF THE COMMISSIONER'S DECISION.

S 4. Section 96-b of the general municipal law is amended by adding a new subdivision 3 to read as follows:

3. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE THE LOCAL LEGISLATIVE BODY OF A COUNTY OR TOWN TO UNREASONABLY BURDEN THE SUSTAINABLE CULTIVATION AND HARVESTING OF TREES EXCEPT AS MAY BE NECESSARY TO ALLOW SUCH BODY TO ADOPT LOCAL LAWS OR ORDINANCES DESIGNED TO PROTECT THEIR PUBLIC PROPERTY OR PUBLIC SAFETY.

S 5. The real property tax law is amended by adding a new section 480-b to read as follows:

S 480-B. SUSTAINABLE FOREST LANDS. 1. IN VIEW OF THE BENEFITS TO THE STATE AND MUNICIPAL CORPORATIONS THEREIN WHICH WILL ACCRUE THROUGH THE

PRACTICE OF SUSTAINABLE FORESTRY, ELIGIBLE TRACTS OF FOREST LAND MAY BE GRANTED AN EXEMPTION FROM INCREASED TAXATION AS HEREINAFTER PROVIDED.

2. AS USED IN THIS SECTION:

(A) "ELIGIBLE TRACT" MEANS A TRACT OF FOREST LAND OF AT LEAST FIFTEEN ACRES UPON WHICH MATURE TIMBER IS OR WILL BE REMOVED IN SUCH MANNER AS TO INSURE A CROP OF MERCHANTABLE TIMBER OR PULPWOOD OR UPON WHICH, AT THE TIME OF CLASSIFICATION, THERE IS AN IMMATURE STAND SUFFICIENT TO PRODUCE SUCH A CROP WITHIN TWENTY YEARS. ANY PART OF SUCH TRACT COVERED BY WATER, OR CONSISTING OF A WETLAND, OR OTHERWISE UNSUITABLE FOR PLANTING OR UNDERPLANTING, SHALL BE EXCLUDED IN DETERMINING THE SIZE OF THE ELIGIBLE TRACT.

(B) "FOREST LAND" INCLUDES NOT ONLY LANDS ON WHICH THERE IS TREE GROWTH, BUT ALSO LANDS WHICH ARE BEST ADAPTED TO TREE GROWTH.

(C) "PLANTED" MEANS THE SETTING OF SUITABLE FOREST TREE SPECIES.

(D) "UNDERPLANTED" MEANS THE SETTING OF SUITABLE FOREST TREE SPECIES UPON LAND THAT AT THE TIME OF PLANTING HAS SOME NATURAL FOREST GROWTH.

(E) "IMMATURE STAND" MEANS TREES WHICH ARE LEFT PRIMARILY FOR FOREST CROP PRODUCTION AFTER THE REMOVAL OF THE MATURE STAND.

(F) "SUSTAINABLE FOREST PLAN" MEANS A PLAN APPROVED PURSUANT TO SUBDIVISION FOUR OF SECTION 9-0817 OF THE ENVIRONMENTAL CONSERVATION LAW.

3. (A) ELIGIBLE TRACTS SHALL BE SEPARATELY ASSESSED FOR PURPOSES OF TAXATION UPON THE BASIS OF THE SOIL TYPE OF THE LAND. THE ASSESSMENT OF AN ELIGIBLE TRACT SHALL BE NO HIGHER THAN THE AGRICULTURAL ASSESSMENT VALUE CALCULATED FOR WHAT IS PRESENTLY CLASSIFIED AS "MINERAL SOIL GROUP 8" PURSUANT TO SECTION 370.8 OF TITLE 1, VOLUME B "AGRICULTURE AND MARKETS" OF THE NEW YORK CODE OF RULES AND REGULATIONS FOR MINERAL SOILS HAVING A SOIL PRODUCTIVITY INDEX OF "29 OR LESS-MARGINAL CULTIVATED USES" OR THE VALUATION OF SIMILAR LANDS WITH SUBSTANTIAL FOREST GROWTH SITUATED IN THE SAME TOWN, WHICHEVER IS LOWER. AT NO TIME SHALL IT EXCEED THE VALUATION FIXED AT THE TIME THE APPLICATION FOR CLASSIFICATION IS FILED AS HEREINAFTER PROVIDED.

(B) AS USED IN THIS SUBDIVISION, THE TERM "LEVEL OF ASSESSMENT" MEANS THE ASSESSED VALUATION OF THE TAXABLE PROPERTY IN THE ASSESSING UNIT.

(C) BUILDINGS OR STRUCTURES HAVING ANY VALUE SHALL NOT BE CONSIDERED PART OF AN ELIGIBLE TRACT.

(D) INDUSTRIAL, COMMERCIAL OR LAND SUBDIVIDED FOR RESIDENTIAL USE SHALL ALSO BE EXCLUDED FROM CONSIDERATION AS AN ELIGIBLE TRACT UNLESS SUBJECT TO A CONSERVATION EASEMENT THAT RESTRICTS THE FUTURE USE TO FOREST OPEN SPACE.

(E) THE ASSESSOR IS HEREBY AUTHORIZED AND DIRECTED TO MAKE THE CHANGES, IF ANY, OCCURRING AS A RESULT OF THE APPLICATION OF THIS SECTION ON THE ASSESSMENT ROLL NOTWITHSTANDING THE FACT THAT HE MAY RECEIVE SUCH CERTIFICATION AFTER THE FINAL COMPLETION, VERIFICATION AND FILING OF SUCH ASSESSMENT ROLL. OTHER LOCAL OFFICERS, INCLUDING SCHOOL AUTHORITIES, HAVING CUSTODY AND CONTROL OF SUCH ROLL, ARE ALSO HEREBY AUTHORIZED AND DIRECTED TO MAKE ANY SUCH CHANGES.

(F) SUCH LAND SHALL BE SO ASSESSED SO LONG AS THE FOREST GROWTH SHALL REMAIN AND IS HARVESTED IN ACCORD WITH THE APPROVED SUSTAINABLE FOREST PLAN. UPON THE REMOVAL OF LAND FROM A SUSTAINABLE FOREST PLAN, IT SHALL BE ASSESSED WITHOUT REGARD TO THE PROVISIONS OF THIS SECTION.

4. THE OWNER OF AN ELIGIBLE TRACT MAY FILE WITH THE ASSESSORS OF THE TOWN IN WHICH SUCH TRACT IS LOCATED A VERIFIED APPLICATION FOR CLASSIFICATION UNDER THIS SECTION. APPLICATION SHALL BE MADE IN DUPLICATE ON FORMS FURNISHED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION WHICH SHALL CONTAIN A DESCRIPTION OF THE LAND SUFFICIENT TO IDENTIFY THE TRACT AND THE NECESSARY INFORMATION AS TO THE PLANTING OR UNDERPLANTING OR

NATURAL REPRODUCTION. UPON THE FILING OF SUCH APPLICATION, THE ASSESSORS SHALL SEND A COPY THEREOF TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR ITS APPROVAL OR DISAPPROVAL. IF SUCH DEPARTMENT APPROVES THE APPLICATION, IT SHALL FILE CERTIFICATES OF APPROVAL, CLASSIFYING SUCH TRACT AS SUSTAINABLE FOREST LAND, WITH THE ASSESSORS AND WITH THE COUNTY CLERK OF THE COUNTY IN WHICH THE TRACT IS SITUATED. THE COUNTY CLERK SHALL RECORD SUCH CERTIFICATES IN THE BOOK OF MISCELLANEOUS RECORDS. ALL TRACTS SO CLASSIFIED SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION AND THE OBLIGATIONS THEREOF SHALL DEVOLVE UPON AND THE BENEFITS THEREOF INURE TO THE OWNER, HIS SUCCESSORS OR ASSIGNS. THE STATE AND ITS POLITICAL SUBDIVISIONS SHALL ALSO BE BOUND THEREBY.

5. WHENEVER ANY CUTTING OF THE FOREST GROWTH ON ANY SUCH TRACT OF FOREST LAND IS PROPOSED, THE OWNER SHALL GIVE NOT LESS THAN THIRTY DAYS' PRIOR NOTICE OF SUCH INTENT TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

6. AN OWNER MAY WITHDRAW HIS TRACT FROM SUCH CLASSIFICATION AT ANY TIME BY PAYING THE SAME AMOUNT AS THE AMOUNT OF TAX THAT WOULD HAVE BEEN ASSESSED HAD THE CLAIMANT NOT BEEN ENROLLED IN THE PROGRAM. IF AN OWNER DESIRES TO WITHDRAW HIS TRACT FROM CLASSIFICATION HE MAY AGREE WITH THE ASSESSORS AND SUPERVISOR AS TO THE PAST TAX VALUE OF THE FOREST LAND. IN CASE OF DISPUTE AS TO THE VALUE OF LAND SO CLASSIFIED AND SUBSEQUENTLY WITHDRAWN FROM CLASSIFICATION, THE VALUE OF THE LAND SO WITHDRAWN SHALL BE RE-ASSESSED BY THE ASSESSORS WITHIN THIRTY DAYS FROM THE TIME THEY ARE REQUIRED TO DO SO. SUCH RE-ASSESSMENT AND TAX SHALL BE TREATED IN ALL RESPECTS THE SAME AS AN ASSESSMENT AND TAX ON THE LAND, EXCEPT AS OTHERWISE HEREIN PROVIDED. THE SUPERVISOR OF THE TOWN MAY MAINTAIN AN ACTION IN ANY COURT OF COMPETENT JURISDICTION AGAINST THE OWNER OF THE LAND FOR THE RECOVERY OF ANY TAX DUE AND UNPAID UNDER THIS SECTION.

7. WHEN IN JUDGMENT OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ANY SUCH CLASSIFIED TRACT NO LONGER HAS VALUE AS A SUSTAINABLE FOREST, THE DEPARTMENT SHALL NOTIFY THE OWNER THAT TWO YEARS FROM THE DATE OF SERVICE OF THE NOTICE THAT THE TRACT WILL THEREUPON BE WITHDRAWN FROM CLASSIFICATION UNDER THIS SECTION. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL NOTIFY THE ASSESSORS TO PROCEED, RE-ASSESS AND TO COLLECT SUCH TAX WHEN DUE, WHICH COLLECTION MAY BE ENFORCED BY ACTION OR LIEN AS HEREIN PROVIDED. SUCH TRACT SHALL BE RE-ASSESSED BY THE ASSESSORS WITHIN THIRTY DAYS FROM THE TIME THEY ARE REQUIRED TO DO SO BY THE DEPARTMENT. SUCH RE-ASSESSMENT AND TAX SHALL BE TREATED IN ALL RESPECTS THE SAME AS AN ASSESSMENT AND TAX ON THE TRACT EXCEPT THAT IF SUCH OWNER, WITHIN THE TWO-YEAR PERIOD, MANAGES THE FOREST LAND AS DIRECTED BY THE DEPARTMENT ACCORDING TO THE PRINCIPLES OF SUSTAINABLE FOREST MANAGEMENT, THE TAX ON THE FOREST LAND SHALL NOT BECOME DUE AND THE TRACT SHALL NOT BE WITHDRAWN FROM CLASSIFICATION AS LONG AS THE OWNER THEREOF SHALL CONTINUE TO MANAGE THE SAME IN THE MANNER PRESCRIBED BY THE DEPARTMENT.

8. NO PENALTY SHALL OCCUR WHEN A CLASSIFICATION CHANGE OCCURS AS A RESULT OF THE DEATH OF THE PROPERTY OWNER OR A PERMANENT DISABILITY OF THE OWNER AFTER THE OWNER HAS REACHED THE AGE OF SIXTY-FIVE YEARS.

9. NO LANDS SHALL BE CLASSIFIED PURSUANT TO THIS SECTION WHICH ARE CURRENTLY ENROLLED IN SECTION FOUR HUNDRED EIGHTY OR FOUR HUNDRED EIGHTY-A OF THIS ARTICLE OR WHICH ARE ELIGIBLE FOR AGRICULTURAL ASSESSMENT.

S 6. 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 energy systems and equipment and access to sunlight necessary therefor; TO FACILITATE THE PRACTICE OF SUSTAINABLE FORESTRY AND SUSTAINABLE AGRICULTURE, TO PREVENT ENVIRONMENTAL DAMAGE, TO CONTROL NON-POINT SOURCE POLLUTION AND TO PROMOTE CONSERVATION OF NATURAL RESOURCES; 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 7. This act shall take effect on the first of January next succeeding the date on which it shall become a law and shall apply to assessment rolls prepared pursuant to taxable status dates occurring on or after its effective date.