

3979

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 29, 2009

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Introduced by M. of A. CROUCH, BURLING, BARCLAY, SAYWARD, WALKER, DUPREY  
-- Multi-Sponsored by -- M. of A. BACALLES, BALL, CALHOUN, ERRIGO,  
FINCH, HAWLEY, MILLER, OAKS, O'MARA, REILICH, SCOZZAFAVA, TEDISCO,  
TOWNSEND -- read once and referred to the Committee on Environmental  
Conservation

AN ACT to amend the environmental conservation law and the general  
municipal law, in relation to authorizing and directing the establish-  
ment of a stream maintenance and flood control program as a local  
option for counties

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

1     Section 1. Section 15-0501 of the environmental conservation law is  
2     amended by adding a new subdivision 6-a to read as follows:  
3     6-A. NO PERMIT UNDER THIS SECTION SHALL BE REQUIRED FOR STREAM MAINTEN-  
4     NANCE AND FLOOD CONTROL ACTIVITIES CONDUCTED IN FURTHERANCE OF A STREAM  
5     MAINTENANCE AND FLOOD CONTROL PLAN APPROVED IN ACCORDANCE WITH THE  
6     PROVISIONS OF SUBDIVISION TWO OF SECTION 16-0111 OF THIS CHAPTER.  
7     S 2. Section 15-0505 of the environmental conservation law is amended  
8     by adding a new subdivision 4-a to read as follows:  
9     4-A. NO PERMIT UNDER THIS SECTION SHALL BE REQUIRED FOR STREAM MAINTEN-  
10    NANCE AND FLOOD CONTROL ACTIVITIES CONDUCTED IN FURTHERANCE OF A STREAM  
11    MAINTENANCE AND FLOOD CONTROL PLAN APPROVED IN ACCORDANCE WITH THE  
12    PROVISIONS OF SUBDIVISION TWO OF SECTION 16-0111 OF THIS CHAPTER.  
13    S 3. Section 16-0111 of the environmental conservation law, as added  
14    by chapter 727 of the laws of 1978, is amended to read as follows:  
15    S 16-0111. Powers and duties of commissioner.  
16    1. The commissioner is hereby authorized and directed for and in  
17    behalf of the state to carry out the state's participation in a federal  
18    program of flood control, to sign all necessary agreements, and to do  
19    and perform all necessary acts in connection therewith to consummate the  
20    intent and purpose running with the approval by the federal government

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

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1 of flood control projects in New York state and the allotment of moneys  
2 for such projects, if, as and when made by the federal government. [He]  
3 THE COMMISSIONER is authorized and empowered, notwithstanding any other  
4 law of this state, to carry out the provisions of this act and to  
5 perform and do such other and further acts not hereby specifically  
6 provided in this act as may be necessary to carry out the projects  
7 [herein] authorized UNDER THIS ARTICLE and so as to conform with the act  
8 and rules, regulations and requirements of the federal government made  
9 to govern the expenditures. Work may be carried out by contract or by  
10 department forces or by a combination of these two methods. However, if  
11 the commissioner deems it to be in the interest of the public, [he] THE  
12 COMMISSIONER may agree with a municipal corporation affected by such  
13 work, to have its contractor or its forces and equipment perform such  
14 work, upon such terms as the commissioner may deem advantageous to the  
15 state. The commissioner shall exercise [his] ANY powers and duties with  
16 respect to the said flood control projects in a manner that will comply  
17 with any act of congress applicable thereto and any rules and regu-  
18 lations made and promulgated by virtue thereof.

19 2. (A) THE COMMISSIONER, IN CONSULTATION WITH THE DIRECTOR OF THE  
20 STATE EMERGENCY MANAGEMENT OFFICE AND LOCAL SOIL AND WATER CONSERVATION  
21 DISTRICTS, IS AUTHORIZED AND DIRECTED TO ESTABLISH A STREAM MAINTENANCE  
22 AND FLOOD CONTROL PROGRAM. THE LOCAL GOVERNING BODY OF A COUNTY MAY  
23 ELECT TO PASS A LOCAL LAW PROVIDING A LOCAL OPTION INTO SUCH PROGRAM. IF  
24 SUCH LOCAL OPTION IS ADOPTED, SUCH COUNTY SHALL CONSULT WITH THE DEPART-  
25 MENT, THE STATE EMERGENCY MANAGEMENT OFFICE, THE APPROPRIATE LOCAL SOIL  
26 AND WATER CONSERVATION DISTRICTS AND SUCH OTHER PERSONS AND ORGANIZA-  
27 TIONS WITH EXPERTISE IN THE FIELD OF STREAM MAINTENANCE AND FLOOD  
28 CONTROL AS MAY BE NECESSARY OR APPROPRIATE TO ASSURE THE DEVELOPMENT OF  
29 THE STREAM MAINTENANCE AND FLOOD CONTROL PLAN.

30 (B) SUCH PLAN SHALL TAKE INTO ACCOUNT WEATHER PATTERNS, AN ANALYSIS OF  
31 EXISTING CONDITIONS AND ANY HYDROLOGICAL DATA NECESSARY TO ESTABLISH A  
32 SCHEDULE OF SPECIFIC SHORT AND LONG TERM STREAM MAINTENANCE AND/OR  
33 RECLAMATION ACTIVITIES DESIGNED TO PREVENT FLOODING WHILE SIMULTANEOUSLY  
34 IMPROVING AQUATIC HABITAT IN THE SUBJECT COUNTY WATERWAYS.

35 (C) UPON THE COMPLETION OF THE PLAN, THE DEPARTMENT SHALL HAVE THIRTY  
36 DAYS TO APPROVE IT OR PROVIDE AN ALTERNATIVE RECOMMENDATION. ONCE THE  
37 FINAL PLAN IS APPROVED BY THE DEPARTMENT, THE STREAM MAINTENANCE AND  
38 FLOOD CONTROL ACTIVITIES SCHEDULED IN THE PLAN SHALL COMMENCE IMMEDIATE-  
39 LY. THE COUNTY SHALL BE RESPONSIBLE FOR PERFORMING THE WORK OUTLINED IN  
40 THE PLAN, HOWEVER, A COUNTY MAY CONTRACT WITH A TOWN, VILLAGE, SOIL AND  
41 WATER CONSERVATION DISTRICT OR INDEPENDENT CONTRACTOR, AS NECESSARY, TO  
42 EXECUTE THE REQUIRED MAINTENANCE ACTIVITIES. WHERE THE MAINTENANCE  
43 ACTIVITIES IN THE PLAN ARE INTENDED TO OCCUR ON PRIVATE PROPERTY, THE  
44 COUNTY, TOWN, VILLAGE, SOIL AND WATER CONSERVATION DISTRICT OR INDEPEND-  
45 ENT CONTRACTOR PERFORMING THE WORK SHALL NOTIFY THE AFFECTED PROPERTY  
46 OWNER AND REQUEST PERMISSION TO ENTER THE PROPERTY AND PERFORM THE SCHE-  
47 DULED MAINTENANCE. SUCH WORK MAY BE DONE WITHOUT PERMISSION OF THE PROP-  
48 erty owner UPON A FINDING BY THE LOCAL GOVERNING BODY OF THE COUNTY,  
49 TOWN OR VILLAGE, WHERE THE PROPERTY IS SITUATED, THAT FAILURE TO MAKE  
50 SUCH REPAIRS POSES AN UNWARRANTED RISK TO THE HEALTH, SAFETY OR WELFARE  
51 OF THE RESIDENTS OF SUCH COUNTY, TOWN OR VILLAGE. ANY COUNTY, TOWN,  
52 VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT TAKING SUCH ACTION SHALL  
53 CONSIDER THE IMPACTS UPSTREAM AND DOWNSTREAM OF WHERE THE STREAM MAINTE-  
54 NANCE AND FLOOD CONTROL IS TO BE PERFORMED. FUNDING FOR ANY STREAM  
55 MAINTENANCE AND FLOOD CONTROL ACTIVITIES SHALL BE MADE AVAILABLE FROM

1 THE MONIES APPROPRIATED TO THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED  
2 PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

3 S 4. The general municipal law is amended by adding a new section  
4 120-dd to read as follows:

5 S 120-DD. STREAM MAINTENANCE AND FLOOD CONTROL BY LOCALITIES. A COUN-  
6 TY, TOWN, VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT ACTING PURSU-  
7 ANT TO A STREAM MAINTENANCE AND FLOOD CONTROL PLAN ESTABLISHED UNDER  
8 SUBDIVISION TWO OF SECTION 16-0111 OF THE ENVIRONMENTAL CONSERVATION LAW  
9 SHALL BE AUTHORIZED TO ENGAGE IN STREAM MAINTENANCE AND FLOOD CONTROL  
10 ACTIVITIES WHICH ARE NECESSARY FOR THE PROTECTION OF THE PUBLIC HEALTH  
11 AND SAFETY. WHERE THE MAINTENANCE ACTIVITIES IN THE PLAN ARE INTENDED TO  
12 OCCUR ON PRIVATE PROPERTY, THE COUNTY, TOWN, VILLAGE OR SOIL AND WATER  
13 CONSERVATION DISTRICT PERFORMING THE WORK SHALL NOTIFY THE AFFECTED  
14 PROPERTY OWNER AND REQUEST PERMISSION TO ENTER THE PROPERTY AND PERFORM  
15 THE SCHEDULED WORK. SUCH WORK MAY BE DONE WITHOUT PERMISSION OF THE  
16 PROPERTY OWNER UPON A FINDING BY THE LOCAL GOVERNING BODY OF THE COUNTY,  
17 TOWN OR VILLAGE, WHERE THE PROPERTY IS SITUATED, THAT FAILURE TO MAKE  
18 SUCH REPAIRS POSES AN UNWARRANTED RISK TO THE HEALTH, SAFETY OR WELFARE  
19 OF THE RESIDENTS OF SUCH COUNTY, TOWN OR VILLAGE. ANY COUNTY, TOWN,  
20 VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT TAKING SUCH ACTION SHALL  
21 CONSIDER THE IMPACTS UPSTREAM AND DOWNSTREAM OF WHERE THE STREAM MAINTE-  
22 NANCE AND FLOOD CONTROL IS TO BE PERFORMED.

23 S 5. This act shall take effect on the one hundred eightieth day after  
24 it shall have become a law. Effective immediately, the addition, amend-  
25 ment and/or repeal of any rule or regulation necessary for the implemen-  
26 tation of this act on its effective date is authorized to be made on or  
27 before such effective date.