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

842

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GUNTHER, LIFTON -- Multi-Sponsored by -- M. of A. GIGLIO, RABBITT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the impoundment of machinery, motor vehicles, aircraft and equipment used in the illegal taking of trees and timber

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

Section 1. The environmental conservation law is amended by adding a new section 71-0717 to read as follows:

S 71-0717. IMPOUNDMENT AND FORFEITURE OF MACHINERY, MOTOR VEHICLES, AIRCRAFT AND EQUIPMENT USED IN THE ILLEGAL TAKING OF TREES OR TIMBER.

1. IN THE EVENT, A PERSON IS CONVICTED OF A SECOND SEPARATE ACT OF UNLAWFULLY HARVESTING TREES OR TIMBER, ANY MACHINERY, MOTOR VEHICLE, AIRCRAFT AND/OR EQUIPMENT USED BY SUCH PERSON DURING THE COMMISSION OF SUCH SECOND UNLAWFUL ACT MAY BE IMPOUNDED BY A PEACE OFFICER OR POLICE OFFICER AND FORFEITED AS PROVIDED IN THIS SECTION. UPON IMPOUNDMENT, THE POLICE OFFICER OR PEACE OFFICER MAY ISSUE AN APPEARANCE TICKET TO THE VIOLATOR OR VIOLATORS AND SHALL PROVIDE THAT THE RETURN DATE SHALL BE WITHIN TWENTY-FOUR HOURS OF THE TIME OF ISSUANCE.

2. THEREAFTER THE POLICE OFFICER OR PEACE OFFICER SHALL FILE AN ACCUSATORY INSTRUMENT IN THE LOCAL CRIMINAL COURT, AS PROVIDED FOR IN ARTICLE ONE HUNDRED FIFTY OF THE CRIMINAL PROCEDURE LAW, STATING THAT THE OWNERS OR OPERATORS OF SUCH EQUIPMENT HAD USED OR WERE IN THE PROCESS OF USING SUCH EQUIPMENT WHILE UNLAWFULLY HARVESTING TREES OR TIMBER, AFTER HAVING PREVIOUSLY BEEN CONVICTED OF SUCH OFFENSE.

3. AT THE TIME AND PLACE DESIGNATED IN THE APPEARANCE TICKET THE COURT SHALL DETERMINE IF THE PERSON CHARGED WITH UNLAWFULLY HARVESTING TREES OR TIMBER AFTER HAVING PREVIOUSLY BEEN CONVICTED OF SUCH OFFENSE AND IF

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

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THERE IS SUFFICIENT INFORMATION BEFORE THE COURT TO JUSTIFY THE CONTINUED IMPOUNDMENT OF SUCH MACHINERY, MOTOR VEHICLES, AIRCRAFT AND/OR EQUIPMENT PENDING THE DISPOSITION OF THE VIOLATION OF LAW SET FORTH IN THE ACCUSATORY INSTRUMENT. IN THE EVENT THE COURT DETERMINES THAT THE INTERESTS OF JUSTICE REQUIRE THE RELEASE OF SUCH IMPOUNDED MACHINERY, MOTOR VEHICLES, AIRCRAFT AND/OR EQUIPMENT THE COURT MAY PROVIDE THAT SECURITY, IN AN AMOUNT DETERMINED BY THE COURT, SHALL BE PROVIDED BY THE VIOLATOR IN LIEU OF SUCH IMPOUNDMENT.

4. UPON A FINDING THAT THERE IS A REASONABLE BASIS FOR CONTINUING THE ACTION AGAINST THE VIOLATOR, THE COURT SHALL SET A TIME AND PLACE WITHIN FOURTEEN DAYS AFTER THE HEARING ON THE ACCUSATORY INSTRUMENT AT WHICH THE VIOLATION OF LAW SET FORTH IN THE ACCUSATORY INSTRUMENT SHALL BE TRIED.

5. THE IMPOUNDED EQUIPMENT SHALL BE RELEASED TO THE VIOLATOR UPON THE PAYMENT OF ANY FINE IMPOSED, AS WELL AS PAYMENT OF THE REASONABLE AND NECESSARY IMPOUNDMENT COSTS INCURRED BY THE IMPOUNDING AUTHORITY.

6. SHOULD SIX MONTHS EXPIRE AND THE VIOLATOR HAS FAILED TO PAY THE FINE, THE IMPOUNDING AUTHORITY SHALL HAVE THE RIGHT TO SELL THE IMPOUNDED EQUIPMENT AT A PUBLIC SALE ON AT LEAST THIRTY DAYS PUBLIC NOTICE. THE PROCEEDS OF SUCH SALE SHALL BE USED FIRST TO PAY THE COST INCURRED FOR IMPOUNDING THE EQUIPMENT AND THEN TO PAY ANY FINE IMPOSED BY THE COURT. ANY BALANCE SHALL BE PAID TO THE RIGHTFUL OWNER OF THE IMPOUNDED EQUIPMENT.

7. THE PROVISIONS OF THIS SECTION SHALL NOT LIMIT OR IMPAIR THE AUTHORITY OF A POLICE OFFICER OR PEACE OFFICER TO ARREST A PERSON COMMITTING A CRIME.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.