

1724

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and
when printed to be committed to the Committee on Environmental Conser-
vation

AN ACT to amend the environmental conservation law, in relation to
protection of state lands and coastal erosion hazard areas

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

1 Section 1. Subdivision 2 of section 9-0303 of the environmental
2 conservation law is amended and a new subdivision 2-a is added to read
3 as follows:
4 2. Structures, FIXTURES AND IMPROVEMENTS. No [building] STRUCTURE,
5 IMPROVEMENT OR FIXTURE shall be erected, used [or], maintained [upon] OR
6 ABANDONED ON state lands except [under permits from] AS the department
7 MAY AUTHORIZE.
8 2-A. ABANDONMENT AND STORAGE OF PROPERTY. NO PERSON SHALL ABANDON
9 PROPERTY ON STATE LANDS, OR MAINTAIN OR STORE PROPERTY ON STATE LANDS
10 EXCEPT AS THE DEPARTMENT MAY AUTHORIZE.
11 S 2. Section 71-0703 of the environmental conservation law is amended
12 by adding a new subdivision 9 to read as follows:
13 9. A. ANY PERSON WHO VIOLATES ANY PROVISION OF, OR WHO FAILS TO
14 PERFORM ANY DUTY IMPOSED BY, SUBDIVISION 2 OF SECTION 9-0303 OF THIS
15 CHAPTER OR ANY RULE OR REGULATION PROMULGATED PURSUANT TO ARTICLE 9 OF
16 THIS CHAPTER PERTAINING TO THE ERECTION, USE, MAINTENANCE OR ABANDONMENT
17 OF A STRUCTURE, IMPROVEMENT OR FIXTURE ON STATE LANDS, OR ANY TERM OR
18 CONDITION OF ANY LICENSE, PERMIT OR OTHER AUTHORIZATION ISSUED PURSUANT
19 TO SUBDIVISION 2 OF SECTION 9-0303 OF THIS CHAPTER, OR ANY FINAL DETER-
20 MINATION OR ORDER RELATING THERETO MADE PURSUANT TO THIS TITLE, SHALL BE
21 LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR
22 EACH VIOLATION AND AN ADDITIONAL CIVIL PENALTY OF NOT MORE THAN ONE
23 THOUSAND DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES,
24 AND, IN ADDITION THERETO, SUCH PERSON MAY BE ENJOINED FROM CONTINUING

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

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1 SUCH VIOLATION AND MAY BE REQUIRED TO UNDERTAKE APPROPRIATE REMEDIAL OR
2 MITIGATION MEASURES AS DIRECTED, INCLUDING BUT NOT LIMITED TO REMOVAL OF
3 ANY STRUCTURE, IMPROVEMENT OR FIXTURE AND ANY LICENSE, PERMIT OR AUTHOR-
4 IZATION ISSUED TO SUCH PERSON MAY BE REVOKED OR SUSPENDED AND ANY PEND-
5 ING RENEWAL APPLICATION DENIED.

6 B. ANY PERSON WHO VIOLATES ANY PROVISION OF, OR WHO FAILS TO PERFORM
7 ANY DUTY IMPOSED BY, SUBDIVISION 2-A OF SECTION 9-0303 OF THIS CHAPTER
8 PERTAINING TO THE ABANDONMENT, MAINTENANCE OR STORAGE OF PROPERTY ON
9 STATE LANDS OR, UNLESS OTHERWISE PROVIDED IN THIS SECTION, ANY PROVISION
10 OF ARTICLE 9 OF THIS CHAPTER OR ANY RULE OR REGULATION PROMULGATED
11 PURSUANT TO SUCH ARTICLE, OR ANY TERM OR CONDITION OF ANY LICENSE,
12 PERMIT OR OTHER AUTHORIZATION ISSUED PURSUANT TO SUCH ARTICLE, OR ANY
13 FINAL DETERMINATION OR ORDER MADE PURSUANT TO THIS TITLE, SHALL BE
14 LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR
15 EACH VIOLATION AND AN ADDITIONAL CIVIL PENALTY OF NOT MORE THAN TWO
16 HUNDRED FIFTY DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION CONTIN-
17 UES, AND, IN ADDITION THERETO, SUCH PERSON MAY BE ENJOINED FROM CONTINU-
18 ING SUCH VIOLATION AND MAY BE REQUIRED TO UNDERTAKE APPROPRIATE REMEDIAL
19 OR MITIGATION MEASURES AS DIRECTED, INCLUDING BUT NOT LIMITED TO REMOVAL
20 OF ABANDONED OR STORED PROPERTY AND ANY LICENSE, PERMIT OR AUTHORIZATION
21 ISSUED TO SUCH PERSON MAY BE REVOKED OR SUSPENDED AND ANY PENDING
22 RENEWAL APPLICATION DENIED.

23 C. THE PENALTIES AND INJUNCTIVE RELIEF PROVIDED HEREIN SHALL BE
24 IMPOSED BY THE COMMISSIONER AFTER AN OPPORTUNITY TO BE HEARD, AND ANY
25 PENALTIES MAY BE RECOVERABLE IN AN ACTION BROUGHT BY THE ATTORNEY GENER-
26 AL AT THE REQUEST AND IN THE NAME OF THE COMMISSIONER.

27 D. THE DEPARTMENT, SUBSEQUENT TO A REASONABLE EFFORT TO NOTIFY THE
28 VIOLATOR, IS AUTHORIZED TO REMOVE AND DISPOSE OF ANY AND ALL STRUCTURES,
29 IMPROVEMENTS, FIXTURES OR OTHER PROPERTY FOUND IN, ON OR ABOVE STATE
30 LANDS IN VIOLATION OF SECTION 9-0303 OF THIS CHAPTER, AND IS AUTHORIZED
31 TO UNDERTAKE REMEDIAL OR MITIGATION MEASURES, AND SHALL NOT BE LIABLE
32 THEREFOR TO THE PERSON OR PERSONS WHO ERECTED, OWNED, OPERATED, STORED,
33 MAINTAINED OR ABANDONED SUCH STRUCTURE, IMPROVEMENT, OR FIXTURE OR OTHER
34 PROPERTY. ANY AND ALL EXPENSES ASSOCIATED WITH THE STATE'S DISPOSITION
35 OF ANY STRUCTURE, IMPROVEMENT, FIXTURE, OR OTHER PROPERTY ABANDONED OR
36 STORED, IN, ON OR ABOVE STATE LANDS AND ANY REMEDIAL OR MITIGATION MEAS-
37 URES UNDERTAKEN BY THE DEPARTMENT SHALL BE PAID BY THE PERSON OR PERSONS
38 WHO ERECTED, OWNED, OPERATED, STORED, MAINTAINED OR ABANDONED SUCH
39 STRUCTURE, IMPROVEMENT, FIXTURE OR OTHER PROPERTY AND SHALL BE A DEBT
40 RECOVERABLE BY THE STATE FROM SUCH PERSON OR PERSONS.

41 S 3. Article 71 of the environmental conservation law is amended by
42 adding a new title 30 to read as follows:

43 TITLE 30

44 ENFORCEMENT OF ARTICLE 34

45 SECTION 71-3001. APPLICABILITY OF THIS TITLE.

46 71-3003. ENFORCEMENT.

47 S 71-3001. APPLICABILITY OF THIS TITLE.

48 IN ADDITION TO THE PROVISIONS OF SECTION 71-4001 OF THIS ARTICLE, THE
49 PROVISIONS OF THIS TITLE SHALL APPLY TO THE ENFORCEMENT OF ARTICLE 34 OF
50 THIS CHAPTER.

51 S 71-3003. ENFORCEMENT.

52 1. ANY PERSON WHO VIOLATES ANY PROVISION OF, OR WHO FAILS TO PERFORM
53 ANY DUTY IMPOSED BY, ARTICLE 34 OF THIS CHAPTER OR ANY RULE OR REGU-
54 LATION PROMULGATED THEREUNDER, OR ANY TERM OR CONDITION OF ANY PERMIT,
55 CERTIFICATE OR ORDER ISSUED THEREUNDER, SHALL BE LIABLE FOR A CIVIL
56 PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION AND AN

1 ADDITIONAL CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND FIVE HUNDRED
2 DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES, AND, IN
3 ADDITION THERETO, SUCH PERSON MAY BE ENJOINED FROM CONTINUING SUCH
4 VIOLATION, AND MAY BE REQUIRED TO UNDERTAKE APPROPRIATE REMEDIAL OR
5 MITIGATION MEASURES AS DIRECTED TO RESTORE THE AREA TO THE CONDITION
6 THAT EXISTED PRIOR TO THE VIOLATION, INCLUDING BUT NOT LIMITED TO
7 REMOVAL OF ANY STRUCTURE, AND ANY PERMIT OR OTHER AUTHORIZATION ISSUED
8 TO SUCH PERSON MAY BE REVOKED OR SUSPENDED, AND ANY PENDING RENEWAL
9 APPLICATION MAY BE DENIED. THE PENALTIES AND INJUNCTIVE RELIEF PROVIDED
10 HEREIN SHALL BE IMPOSED BY THE COMMISSIONER AFTER AN OPPORTUNITY TO BE
11 HEARD, AND ANY PENALTIES MAY BE RECOVERABLE IN AN ACTION BROUGHT BY THE
12 ATTORNEY GENERAL AT THE REQUEST AND IN THE NAME OF THE COMMISSIONER.

13 2. IF THE VIOLATOR DOES NOT, IN A REASONABLE TIME, UNDERTAKE REMEDIAL
14 OR MITIGATION MEASURES AS DIRECTED, INCLUDING REMOVAL OF ANY STRUCTURE,
15 THE DEPARTMENT IS AUTHORIZED TO UNDERTAKE SUCH MEASURES, INCLUDING
16 REMOVAL OF ANY STRUCTURE ERECTED IN VIOLATION OF ARTICLE 34 OF THIS
17 CHAPTER, AND SHALL NOT BE LIABLE THEREFOR TO THE PERSON OR PERSONS WHO
18 UNDERTOOK ACTIVITIES OR DEVELOPMENT IN VIOLATION OF ARTICLE 34 OF THIS
19 CHAPTER. ANY AND ALL EXPENSES ASSOCIATED THEREWITH SHALL BE PAID BY THE
20 VIOLATOR AND SHALL BE DEBT RECOVERABLE BY THE STATE FROM SUCH PERSON OR
21 PERSONS.

22 S 4. This act shall take effect on the ninetieth day after it shall
23 have become a law.