

3783

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. THOMPSON, FOLEY, PARKER, PERKINS, SCHNEIDERMAN, STEWART-COUSINS -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to protection of state lands

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

- 1 Section 1. Section 9-0303 of the environmental conservation law,  
2 subdivision 1 as amended by chapter 602 of the laws of 2003, is amended  
3 to read as follows:  
4 S 9-0303. Restrictions on use of state lands.  
5 In order to protect the state lands described in this [article] CHAP-  
6 TER, the following provisions shall apply:  
7 1. Trees [or], timber OR VEGETATION. [Except as provided in subdivi-  
8 sion 2 of section 9-0107 and in sections 9-0501 through 9-0507 of this  
9 article no] NO person shall cut, remove, injure, destroy or cause to be  
10 cut, removed, injured or destroyed any trees [or], timber OR VEGETATION  
11 or other property [thereon] ON STATE LANDS, or enter upon [such] STATE  
12 lands with intent to [do so] ENGAGE IN THOSE ACTIVITIES, EXCEPT AS THE  
13 DEPARTMENT MAY AUTHORIZE.  
14 2. Structures, IMPROVEMENTS AND FIXTURES. No [building] PERSON shall  
15 [be erected, used or maintained upon] ERECT, USE, MAINTAIN, STORE OR  
16 ABANDON IN OR ON ANY state lands ANY STRUCTURE, IMPROVEMENT OR FIXTURE  
17 except [under permits from] AS the department MAY AUTHORIZE.  
18 3. Agricultural use. No person shall use any portion of the forest  
19 preserve for agricultural purposes, nor shall cattle or domestic animals  
20 of any kind be permitted to graze [thereon] ON ANY PORTION OF THE FOREST  
21 PRESERVE.  
22 4. Deposit rubbish. No person shall deposit or leave on state lands  
23 any rubbish or other waste material.

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

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1 5. Transfer or lease. No person shall lease, transfer or accept any  
2 lease or transfer of any lands in the forest preserve or of any STRUC-  
3 TURES, improvements [thereon] OR FIXTURES ON THOSE LANDS.

4 6. Disposal of STRUCTURES, improvements AND FIXTURES. The department  
5 may REMOVE AND dispose of any STRUCTURES, improvements AND FIXTURES upon  
6 state lands under such conditions as it deems to be to the public inter-  
7 est.

8 7. Removal of [materials] PROPERTY generally. No person shall remove  
9 any [material] PROPERTY belonging to the state from [the] state lands  
10 without the authorization of the department.

11 S 2. Subdivision 1 of section 71-0703 of the environmental conserva-  
12 tion law, as amended by chapter 602 of the laws of 2003, is amended and  
13 a new subdivision 9 is added to read as follows:

14 1. Except as otherwise provided in subdivision 4[, ] OR 5[, 6 or 7] of  
15 this section, any person who violates any provision of article 9, or the  
16 rules, regulations or orders promulgated pursuant [thereto] TO ARTICLE  
17 9, or the terms of any permit issued [thereunder] UNDER ARTICLE 9, or  
18 who fails to perform any duty imposed by any provision [thereof] OF  
19 ARTICLE 9, shall BE SUBJECT TO CRIMINAL AND CIVIL PROSECUTION AND LIABLE  
20 FOR CRIMINAL AND CIVIL PENALTIES AS FOLLOWS:

21 A. CRIMINAL PENALTIES. THE OFFENSE SHALL be [guilty of] a violation,  
22 and, upon conviction, THE PERSON shall be punished by a fine of not  
23 [more] LESS than [two hundred] fifty dollars NOR MORE THAN ONE THOUSAND  
24 DOLLARS, or by imprisonment for not more than fifteen days, or by both  
25 [such] A fine and imprisonment[, and in addition thereto shall].

26 B. CIVIL PENALTIES. THE PERSON SHALL be liable [to] FOR a civil penal-  
27 ty of not less than [ten] FIFTY DOLLARS nor more than one [hundred]  
28 THOUSAND dollars FOR EACH VIOLATION.

29 C. IN ADDITION TO ANY CRIMINAL OR CIVIL PENALTIES PROVIDED IN THIS  
30 SUBDIVISION, THE PERSON MAY BE ENJOINED FROM CONTINUING THE VIOLATION  
31 AND MAY BE REQUIRED TO UNDERTAKE APPROPRIATE REMEDIAL OR MITIGATION  
32 MEASURES AS DIRECTED, AND ANY LICENSE, PERMIT OR OTHER AUTHORIZATION  
33 ISSUED TO THE PERSON PURSUANT TO ARTICLE 9 MAY BE REVOKED OR SUSPENDED  
34 AND ANY PENDING RENEWAL APPLICATION MAY BE DENIED. THE COMMISSIONER OR  
35 COURT MAY IMPOSE THESE PENALTIES AND INJUNCTIVE RELIEF AFTER AN OPPORTU-  
36 NITY TO BE HEARD AND ANY PENALTIES MAY BE RECOVERABLE IN AN ACTION  
37 BROUGHT BY THE ATTORNEY GENERAL AT THE REQUEST AND IN THE NAME OF THE  
38 COMMISSIONER.

39 9. A. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, ANY PERSON WHO  
40 VIOLATES ANY PROVISION OF, OR WHO FAILS TO PERFORM ANY DUTY IMPOSED BY,  
41 SUBDIVISION 2 OF SECTION 9-0303 OF THIS CHAPTER, OR ANY RULE OR REGU-  
42 LATION PROMULGATED PURSUANT TO THIS CHAPTER PERTAINING TO THE ERECTION,  
43 USE, MAINTENANCE, STORAGE OR ABANDONMENT OF A STRUCTURE, IMPROVEMENT OR  
44 FIXTURE IN OR ON ANY STATE LANDS DESCRIBED IN THIS CHAPTER, OR ANY TERM  
45 OR CONDITION OF ANY PERMIT OR OTHER AUTHORIZATION ISSUED PURSUANT TO  
46 THIS CHAPTER AUTHORIZING THE USE OF STATE LANDS FOR A SPECIFIC PURPOSE,  
47 OR ANY FINAL DETERMINATION OR ORDER MADE PURSUANT TO THIS CHAPTER RELAT-  
48 ING TO STATE LANDS, SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN  
49 FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN ADDITION, THE PERSON MAY  
50 BE ENJOINED FROM CONTINUING THE VIOLATION AND MAY BE REQUIRED TO UNDER-  
51 TAKE APPROPRIATE REMEDIAL OR MITIGATION MEASURES AS DIRECTED, INCLUDING  
52 REMOVAL OF ANY STRUCTURE, IMPROVEMENT OR FIXTURE, AND THE PERMIT OR  
53 OTHER AUTHORIZATION ISSUED TO THE PERSON AUTHORIZING THE PERSON'S USE OF  
54 STATE LANDS FOR THE SPECIFIC PURPOSE MAY BE REVOKED OR SUSPENDED AND ANY  
55 PENDING RENEWAL APPLICATION MAY BE DENIED. THE COMMISSIONER MAY IMPOSE  
56 THESE PENALTIES AND INJUNCTIVE RELIEF AFTER AN OPPORTUNITY TO BE HEARD

1 AND ANY PENALTIES MAY BE RECOVERABLE IN AN ACTION BROUGHT BY THE ATTOR-  
2 NEY GENERAL AT THE REQUEST AND IN THE NAME OF THE COMMISSIONER.

3 B. THE DEPARTMENT, SUBSEQUENT TO A REASONABLE EFFORT TO NOTIFY THE  
4 VIOLATOR, IS AUTHORIZED TO REMOVE AND DISPOSE OF ANY AND ALL STRUCTURES,  
5 IMPROVEMENTS OR FIXTURES FOUND IN OR ON ANY STATE LANDS IN VIOLATION OF  
6 SECTION 9-0303 OF THIS CHAPTER, AND IS AUTHORIZED TO UNDERTAKE REMEDIAL  
7 OR MITIGATION MEASURES, AND SHALL NOT BE LIABLE TO THE PERSON WHO OWNED,  
8 ERECTED, USED, MAINTAINED, STORED OR ABANDONED THE STRUCTURE, IMPROVE-  
9 MENT OR FIXTURE. ANY AND ALL EXPENSES ASSOCIATED WITH THE STATE'S DISPO-  
10 SITION OF ANY STRUCTURE, IMPROVEMENT OR FIXTURE AND ANY REMEDIAL OR  
11 MITIGATION MEASURES UNDERTAKEN BY THE DEPARTMENT SHALL BE PAID BY THE  
12 PERSON WHO OWNED, ERECTED, USED, MAINTAINED, STORED OR ABANDONED THE  
13 STRUCTURE, IMPROVEMENT OR FIXTURE AND SHALL BE A DEBT RECOVERABLE BY THE  
14 STATE FROM THAT PERSON.

15 S 3. This act shall take effect on the ninetieth day after it shall  
16 have become a law.