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

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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:

Section 1. Section 9-0303 of the environmental conservation law, subdivision 1 as amended by chapter 602 of the laws of 2003, is amended to read as follows:

S 9-0303. Restrictions on use of state lands.

In order to protect the state lands described in this [article] CHAPTER, the following provisions shall apply:

1. Trees [or], timber OR VEGETATION. [Except as provided in subdivision 2 of section 9-0107 and in sections 9-0501 through 9-0507 of this article no] NO person shall cut, remove, injure, destroy or cause to be cut, removed, injured or destroyed any trees [or], timber OR VEGETATION or other property [thereon] ON STATE LANDS, or enter upon [such] STATE lands with intent to [do so] ENGAGE IN THOSE ACTIVITIES, EXCEPT AS THE DEPARTMENT MAY AUTHORIZE.

2. Structures, IMPROVEMENTS AND FIXTURES. No [building] PERSON shall [be erected, used or maintained upon] ERECT, USE, MAINTAIN, STORE OR ABANDON IN OR ON ANY state lands ANY STRUCTURE, IMPROVEMENT OR FIXTURE except [under permits from] AS the department MAY AUTHORIZE.

3. Agricultural use. No person shall use any portion of the forest preserve for agricultural purposes, nor shall cattle or domestic animals of any kind be permitted to graze [thereon] ON ANY PORTION OF THE FOREST PRESERVE.

4. Deposit rubbish. No person shall deposit or leave on state lands 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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5. Transfer or lease. No person shall lease, transfer or accept any lease or transfer of any lands in the forest preserve or of any STRUCTURES, improvements [thereon] OR FIXTURES ON THOSE LANDS.

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

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

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

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

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

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

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

9. A. IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, ANY PERSON WHO VIOLATES ANY PROVISION OF, OR WHO FAILS TO PERFORM ANY DUTY IMPOSED BY, SUBDIVISION 2 OF SECTION 9-0303 OF THIS CHAPTER, OR ANY RULE OR REGULATION PROMULGATED PURSUANT TO THIS CHAPTER PERTAINING TO THE ERECTION, USE, MAINTENANCE, STORAGE OR ABANDONMENT OF A STRUCTURE, IMPROVEMENT OR FIXTURE IN OR ON ANY STATE LANDS DESCRIBED IN THIS CHAPTER, OR ANY TERM OR CONDITION OF ANY PERMIT OR OTHER AUTHORIZATION ISSUED PURSUANT TO THIS CHAPTER AUTHORIZING THE USE OF STATE LANDS FOR A SPECIFIC PURPOSE, OR ANY FINAL DETERMINATION OR ORDER MADE PURSUANT TO THIS CHAPTER RELATING TO STATE LANDS, SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN ADDITION, THE PERSON MAY BE ENJOINED FROM CONTINUING THE VIOLATION AND MAY BE REQUIRED TO UNDERTAKE APPROPRIATE REMEDIAL OR MITIGATION MEASURES AS DIRECTED, INCLUDING REMOVAL OF ANY STRUCTURE, IMPROVEMENT OR FIXTURE, AND THE PERMIT OR OTHER AUTHORIZATION ISSUED TO THE PERSON AUTHORIZING THE PERSON'S USE OF STATE LANDS FOR THE SPECIFIC PURPOSE MAY BE REVOKED OR SUSPENDED AND ANY PENDING RENEWAL APPLICATION MAY BE DENIED. THE COMMISSIONER MAY IMPOSE THESE PENALTIES AND INJUNCTIVE RELIEF AFTER AN OPPORTUNITY TO BE HEARD

AND ANY PENALTIES MAY BE RECOVERABLE IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL AT THE REQUEST AND IN THE NAME OF THE COMMISSIONER.

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

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