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

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2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. CROUCH, BURLING, BARCLAY, SAYWARD, DUPREY, CALHOUN, FINCH, HAWLEY, J. MILLER, OAKS, REILICH, TEDISCO -- 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 establishment 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 15-0501 of the environmental conservation law is amended by adding a new subdivision 6-a to read as follows:

6-A. NO PERMIT UNDER THIS SECTION SHALL BE REQUIRED FOR STREAM MAINTENANCE AND FLOOD CONTROL ACTIVITIES CONDUCTED IN FURTHERANCE OF A STREAM MAINTENANCE AND FLOOD CONTROL PLAN APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION 16-0111 OF THIS CHAPTER.

S 2. Section 15-0505 of the environmental conservation law is amended by adding a new subdivision 4-a to read as follows:

4-A. NO PERMIT UNDER THIS SECTION SHALL BE REQUIRED FOR STREAM MAINTENANCE AND FLOOD CONTROL ACTIVITIES CONDUCTED IN FURTHERANCE OF A STREAM MAINTENANCE AND FLOOD CONTROL PLAN APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION 16-0111 OF THIS CHAPTER.

S 3. Section 16-0111 of the environmental conservation law, as added by chapter 727 of the laws of 1978, is amended to read as follows:

S 16-0111. Powers and duties of commissioner.

1. The commissioner is hereby authorized and directed for and in behalf of the state to carry out the state's participation in a federal program of flood control, to sign all necessary agreements, and to do and perform all necessary acts in connection therewith to consummate the intent and purpose running with the approval by the federal government of flood control projects in New York state and the allotment of moneys for such projects, if, as and when made by the federal government. [He]

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

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THE COMMISSIONER is authorized and empowered, notwithstanding any other law of this state, to carry out the provisions of this act and to perform and do such other and further acts not hereby specifically provided in this act as may be necessary to carry out the projects [herein] authorized UNDER THIS ARTICLE and so as to conform with the act and rules, regulations and requirements of the federal government made to govern the expenditures. Work may be carried out by contract or by department forces or by a combination of these two methods. However, if the commissioner deems it to be in the interest of the public, [he] THE COMMISSIONER may agree with a municipal corporation affected by such work, to have its contractor or its forces and equipment perform such work, upon such terms as the commissioner may deem advantageous to the state. The commissioner shall exercise [his] ANY powers and duties with respect to the said flood control projects in a manner that will comply with any act of congress applicable thereto and any rules and regulations made and promulgated by virtue thereof.

2. (A) THE COMMISSIONER, IN CONSULTATION WITH THE DIRECTOR OF THE STATE EMERGENCY MANAGEMENT OFFICE AND LOCAL SOIL AND WATER CONSERVATION DISTRICTS, IS AUTHORIZED AND DIRECTED TO ESTABLISH A STREAM MAINTENANCE AND FLOOD CONTROL PROGRAM. THE LOCAL GOVERNING BODY OF A COUNTY MAY ELECT TO PASS A LOCAL LAW PROVIDING A LOCAL OPTION INTO SUCH PROGRAM. IF SUCH LOCAL OPTION IS ADOPTED, SUCH COUNTY SHALL CONSULT WITH THE DEPARTMENT, THE STATE EMERGENCY MANAGEMENT OFFICE, THE APPROPRIATE LOCAL SOIL AND WATER CONSERVATION DISTRICTS AND SUCH OTHER PERSONS AND ORGANIZATIONS WITH EXPERTISE IN THE FIELD OF STREAM MAINTENANCE AND FLOOD CONTROL AS MAY BE NECESSARY OR APPROPRIATE TO ASSURE THE DEVELOPMENT OF THE STREAM MAINTENANCE AND FLOOD CONTROL PLAN.

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

(C) UPON THE COMPLETION OF THE PLAN, THE DEPARTMENT SHALL HAVE THIRTY DAYS TO APPROVE IT OR PROVIDE AN ALTERNATIVE RECOMMENDATION. ONCE THE FINAL PLAN IS APPROVED BY THE DEPARTMENT, THE STREAM MAINTENANCE AND FLOOD CONTROL ACTIVITIES SCHEDULED IN THE PLAN SHALL COMMENCE IMMEDIATELY. THE COUNTY SHALL BE RESPONSIBLE FOR PERFORMING THE WORK OUTLINED IN THE PLAN, HOWEVER, A COUNTY MAY CONTRACT WITH A TOWN, VILLAGE, SOIL AND WATER CONSERVATION DISTRICT OR INDEPENDENT CONTRACTOR, AS NECESSARY, TO EXECUTE THE REQUIRED MAINTENANCE ACTIVITIES. WHERE THE MAINTENANCE ACTIVITIES IN THE PLAN ARE INTENDED TO OCCUR ON PRIVATE PROPERTY, THE COUNTY, TOWN, VILLAGE, SOIL AND WATER CONSERVATION DISTRICT OR INDEPENDENT CONTRACTOR PERFORMING THE WORK SHALL NOTIFY THE AFFECTED PROPERTY OWNER AND REQUEST PERMISSION TO ENTER THE PROPERTY AND PERFORM THE SCHEDULED MAINTENANCE. SUCH WORK MAY BE DONE WITHOUT PERMISSION OF THE PROPERTY OWNER UPON A FINDING BY THE LOCAL GOVERNING BODY OF THE COUNTY, TOWN OR VILLAGE, WHERE THE PROPERTY IS SITUATED, THAT FAILURE TO MAKE SUCH REPAIRS POSES AN UNWARRANTED RISK TO THE HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF SUCH COUNTY, TOWN OR VILLAGE. ANY COUNTY, TOWN, VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT TAKING SUCH ACTION SHALL CONSIDER THE IMPACTS UPSTREAM AND DOWNSTREAM OF WHERE THE STREAM MAINTENANCE AND FLOOD CONTROL IS TO BE PERFORMED. FUNDING FOR ANY STREAM MAINTENANCE AND FLOOD CONTROL ACTIVITIES SHALL BE MADE AVAILABLE FROM THE MONIES APPROPRIATED TO THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

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

S 120-DD. STREAM MAINTENANCE AND FLOOD CONTROL BY LOCALITIES. A COUNTY, TOWN, VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT ACTING PURSUANT TO A STREAM MAINTENANCE AND FLOOD CONTROL PLAN ESTABLISHED UNDER SUBDIVISION TWO OF SECTION 16-0111 OF THE ENVIRONMENTAL CONSERVATION LAW SHALL BE AUTHORIZED TO ENGAGE IN STREAM MAINTENANCE AND FLOOD CONTROL ACTIVITIES WHICH ARE NECESSARY FOR THE PROTECTION OF THE PUBLIC HEALTH AND SAFETY. WHERE THE MAINTENANCE ACTIVITIES IN THE PLAN ARE INTENDED TO OCCUR ON PRIVATE PROPERTY, THE COUNTY, TOWN, VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT PERFORMING THE WORK SHALL NOTIFY THE AFFECTED PROPERTY OWNER AND REQUEST PERMISSION TO ENTER THE PROPERTY AND PERFORM THE SCHEDULED WORK. SUCH WORK MAY BE DONE WITHOUT PERMISSION OF THE PROPERTY OWNER UPON A FINDING BY THE LOCAL GOVERNING BODY OF THE COUNTY, TOWN OR VILLAGE, WHERE THE PROPERTY IS SITUATED, THAT FAILURE TO MAKE SUCH REPAIRS POSES AN UNWARRANTED RISK TO THE HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF SUCH COUNTY, TOWN OR VILLAGE. ANY COUNTY, TOWN, VILLAGE OR SOIL AND WATER CONSERVATION DISTRICT TAKING SUCH ACTION SHALL CONSIDER THE IMPACTS UPSTREAM AND DOWNSTREAM OF WHERE THE STREAM MAINTENANCE AND FLOOD CONTROL IS TO BE PERFORMED.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such effective date.