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

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2011-2012 Regular Sessions

I N S E N A T E

February 11, 2011

Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the parks, recreation and historic preservation law, in relation to oil and gas drilling in Allegany state park

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

Section 1. The parks, recreation and historic preservation law is amended by adding a new section 13.31 to read as follows:

S 13.31 OIL AND GAS DRILLING IN ALLEGANY STATE PARK. 1. LEGISLATIVE FINDINGS AND DECLARATION. THE LEGISLATURE FINDS AND DECLARES THAT ALLEGANY STATE PARK HARBORS UNIQUE AND IRREPLACEABLE NATURAL AND SCENIC RESOURCES AND PROVIDES AN EXTENSIVE VARIETY OF RECREATIONAL AND EDUCATIONAL OPPORTUNITIES FOR NEW YORK RESIDENTS AND VISITORS. THE PARK IS LOCATED IN A GEOLOGICALLY DISTINCT, UNGLACIATED AREA WITH UNIQUE TERRESTRIAL, FRESHWATER AND OLD GROWTH FOREST ECOSYSTEMS THAT WARRANT SPECIAL PROTECTION, AND IS HOME TO NUMEROUS RARE, THREATENED AND ENDANGERED SPECIES OF PLANTS AND WILDLIFE. THE PARK'S SIXTY-FIVE THOUSAND ACRES ARE THE LARGEST TRACT OF INTACT, UNFRAGMENTED FOREST LAND IN THE WESTERN HALF OF THE STATE, INCLUDING MATURE SECOND-GROWTH AS WELL AS EXTENSIVE OLD-GROWTH FORESTS. THESE FEATURES ARE AN INVALUABLE AND IRREPLACEABLE PART OF THE STATE'S NATURAL HERITAGE WHICH THE STATE IS OBLIGATED TO PRESERVE FOR FUTURE GENERATIONS.

THE LEGISLATURE FURTHER FINDS AND DECLARES THAT A UNIQUE CIRCUMSTANCE EXISTS IN ALLEGANY STATE PARK WHEREBY PRIVATE ENTITIES CONTROL SUBSURFACE OIL AND GAS RIGHTS BENEATH PORTIONS OF THE PARK. OWNERSHIP OF SUCH SUBSURFACE OIL AND GAS RIGHTS WAS SEVERED AND RETAINED IN PRIVATE OWNERSHIP PRIOR TO THE ACQUISITION AND CREATION OF THE PARK BY THE STATE OF NEW YORK IN THE EARLY TWENTIETH CENTURY. IT IS THE PURPOSE OF THIS SECTION TO ENSURE THAT ANY EXPLORATION, DRILLING, OR PRODUCTION ASSOCIATED WITH PRIVATELY-CONTROLLED OIL AND GAS RIGHTS WITHIN ALLEGANY STATE

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

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PARK, INCLUDING ALL ACTIVITIES NECESSARY TO OBTAIN ACCESS TO SUBSURFACE OIL AND GAS, BE UNDERTAKEN WITH THE STRICTEST POSSIBLE OVERSIGHT TO MINIMIZE ADVERSE IMPACTS ON THE PARK'S NATURAL, SCENIC, AND RECREATIONAL RESOURCES AND THE PUBLIC'S ACCESS TO THEM AND ENJOYMENT THEREOF. IT IS INTENDED THAT THE PROVISIONS OF THIS SECTION BE LIBERALLY CONSTRUED AND APPLIED IN FURTHERANCE OF THIS PURPOSE.

THE LEGISLATURE FINDS AND DECLARES THAT THE PROVISIONS OF THIS SECTION HAVE BEEN ENACTED PURSUANT TO THE STATUTORILY-MANDATED DUTY OF THE OFFICE TO PROVIDE FOR THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC USING FACILITIES UNDER ITS JURISDICTION. THE LEGISLATURE FINDS THAT THE PROVISIONS OF THIS SECTION CONSTITUTE REASONABLE RESTRICTIONS UPON THE EXERCISE OF PRIVATELY-CONTROLLED OIL AND GAS RIGHTS IN FURTHERANCE OF THE STATE'S SOVEREIGN POWER AND DUTY TO HOLD PUBLIC PARKLANDS IN TRUST FOR THE BENEFIT OF THE PEOPLE OF THE STATE.

2. SURFACE ACCESS PERMIT. NO DRILLING, ROAD BUILDING, CLEARING OF VEGETATION, OR OTHER ACTIVITY IN FURTHERANCE OF THE EXPLORATION OR PRODUCTION OF PRIVATELY-CONTROLLED OIL OR GAS RIGHTS BENEATH STATE OWNED LAND WITHIN ALLEGANY STATE PARK SHALL BE UNDERTAKEN EXCEPT PURSUANT TO THE TERMS OF A SURFACE ACCESS PERMIT ISSUED BY THE OFFICE PURSUANT TO THIS SECTION. AN APPLICATION FOR SUCH PERMIT SHALL BE FILED WITH THE OFFICE CONCURRENT WITH THE APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR A PERMIT TO DRILL AN OIL OR GAS WELL AND SHALL INCLUDE AT A MINIMUM:

(A) PROOF SATISFACTORY TO THE OFFICE OF THE APPLICANT'S LEGAL RIGHT TO RECOVER OIL OR GAS RESOURCES BENEATH STATE OWNED LAND, INCLUDING COPIES OF TITLE REPORTS AND, WHERE APPLICABLE, LEASES WITH TITLE HOLDERS, AND A BOUNDARY SURVEY COMPLETED BY A LICENSED SURVEYOR OF THE AFFECTED AREA;

(B) A MAP IDENTIFYING THE PROPOSED LOCATION OF EACH OIL OR GAS WELL FOR WHICH AN APPLICATION FOR A DRILLING PERMIT HAS BEEN SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

(C) A GENERAL DESCRIPTION OF THE PROPOSED OIL OR GAS EXPLORATION AND PRODUCTION ACTIVITIES;

(D) IDENTIFICATION OF THE AMOUNT OF WATER NEEDED AND ITS SOURCES;

(E) A DETAILED DESCRIPTION OF ALL SURFACE DISTURBANCE ASSOCIATED WITH THE PROPOSED EXPLORATION AND PRODUCTION OF OIL OR GAS, INCLUDING BUT NOT LIMITED TO THE LOCATION OF ALL PROPOSED ROAD CONSTRUCTION, ALL PROPOSED WELL DRILLING LOCATIONS, AND THE LOCATION AND AMOUNT OF PROPOSED TREE AND VEGETATION REMOVAL, AND THE METHODS TO BE USED IN SUCH ACTIVITIES;

(F) A DESCRIPTION OF HOW PRODUCED OIL OR GAS WILL BE TRANSPORTED OUT OF THE PARK, INCLUDING A DETAILED DESCRIPTION OF THE CONSTRUCTION AND LOCATION OF ALL PROPOSED TRANSMISSION LINES;

(G) A DETAILED DESCRIPTION AND TIMELINE OF STEPS THAT WILL BE TAKEN TO RECLAIM THE AFFECTED SURFACE AREA AND RESTORE IT TO ITS PREVIOUS NATURAL CONDITION ONCE DRILLING AND PRODUCTION ACTIVITIES HAVE CEASED. SUCH DESCRIPTION SHALL DESCRIBE INTERIM RESTORATION ACTIVITIES THAT SHALL OCCUR IMMEDIATELY AFTER EACH WELL HAS BEEN DRILLED AND ANY ASSOCIATED TRANSMISSION LINES HAVE BEEN INSTALLED, AS WELL AS FINAL RESTORATION ACTIVITIES THAT SHALL OCCUR AFTER PRODUCTION HAS CEASED;

(H) BASELINE SAMPLING RESULTS, TAKEN PRIOR TO ANY GROUND DISTURBANCE OR REMOVAL OF TREES OR VEGETATION, FOR SURFACE WATER, SOIL, AND EXISTING GROUNDWATER WELLS IN PROXIMITY TO PROPOSED DRILLING LOCATIONS, TRANSMISSION LINES, AND ROAD CONSTRUCTION LOCATIONS AS DETERMINED BY THE OFFICE;

(I) A COMPREHENSIVE INVENTORY OF PLANT AND ANIMAL SPECIES, ECOLOGICAL COMMUNITIES, WETLANDS, AND SURFACE STREAMS WITHIN THE AREA, AS DETERMINED BY THE OFFICE, THAT MAY BE AFFECTED BY PROPOSED DRILLING

LOCATIONS, ROAD CONSTRUCTION, TRANSMISSION LINES, AND ANY OTHER ACTIVITIES ASSOCIATED WITH PROPOSED EXPLORATION AND PRODUCTION ACTIVITIES, AND AN ANALYSIS OF THE POTENTIAL ADVERSE IMPACTS ON SUCH SPECIES, ECOLOGICAL COMMUNITIES, WETLANDS, AND SURFACE STREAMS; AND

(J) A DESCRIPTION OF HISTORIC, ARCHEOLOGICAL AND CULTURAL RESOURCES POTENTIALLY AFFECTED BY PROPOSED EXPLORATION, PRODUCTION, ROAD BUILDING, AND TRANSMISSION LINES.

3. SURFACE ACCESS PERMIT CONDITIONS. ANY SURFACE ACCESS PERMIT GRANTED BY THE OFFICE PURSUANT TO THIS SECTION SHALL INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

(A) THE OFFICE MAY LIMIT THE NUMBER OF WELL SITES, THE LOCATION OF WELL SITES, AND THE AMOUNT OF CLEARED AREA ASSOCIATED WITH EACH WELL SITE IN ORDER TO MITIGATE ADVERSE IMPACTS TO NATURAL, ECOLOGICAL, SCENIC, AND RECREATIONAL RESOURCES.

(B) NO LIQUID OR SOLID WASTES SHALL BE COLLECTED OR STORED IN OPEN PITS NOR DISPOSED OF OR RELEASED WITHIN THE PARK.

(C) THE OFFICE MAY LIMIT THE CONSTRUCTION AND THE LOCATION OF ACCESS ROADS IN ORDER TO MITIGATE ADVERSE IMPACTS TO NATURAL, ECOLOGICAL, SCENIC, AND RECREATIONAL RESOURCES. ALL NEW ROADS SHALL BE DESIGNED TO THE MINIMUM POSSIBLE WIDTH AND SHALL BE CONSTRUCTED TO AVOID OR MINIMIZE THE POTENTIAL FOR EROSION AND OTHER ADVERSE IMPACTS. ALL TREES CUT OR REMOVED AS PART OF ROAD CONSTRUCTION AND WELL SITE CLEARING ACTIVITIES SHALL REMAIN THE PROPERTY OF THE OFFICE.

(D) IN ORDER TO PROTECT THE HEALTH AND SAFETY OF PARK VISITORS AND EMPLOYEES AND TO MINIMIZE ADVERSE IMPACTS ON PUBLIC RECREATIONAL USES OF THE PARK, THE OFFICE MAY RESTRICT THE SEASONS THAT THE PERMITTEE MAY UNDERTAKE ROAD CONSTRUCTION, WELL DRILLING, AND ASSOCIATED ACTIVITIES ON STATE OWNED LANDS. THE OFFICE MAY ALSO DESIGNATE THE PARK ROADS THE PERMITTEE SHALL USE FOR VEHICLE ACCESS INTO AND THROUGH THE PARK, AND MAY RESTRICT SEASONS OR TIMES THAT THE PERMITTEE MAY EXERCISE VEHICLE ACCESS ON PARK ROADS OPEN TO THE PUBLIC.

(E) THE PERMITTEE SHALL BE REQUIRED TO ESTABLISH AND MAINTAIN A FUND SUFFICIENT TO REIMBURSE THE OFFICE FOR THE COSTS OF AN ON-SITE MONITOR, WHO SHALL BE HIRED BY AND REPORT TO THE OFFICE, WHO SHALL BE PHYSICALLY PRESENT DURING ALL LAND CLEARING, ROAD CONSTRUCTION, WELL DRILLING, INSTALLATION AND MAINTENANCE OF TRANSMISSION LINES, WELL MAINTENANCE, WELL CLOSURE, AND RESTORATION ACTIVITIES UNDERTAKEN BY THE PERMITTEE TO ASSURE COMPLIANCE WITH ALL REQUIRED PERMITS AND APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS.

(F) THE PERMITTEE SHALL BE REQUIRED TO ESTABLISH AND MAINTAIN A FUND SUFFICIENT TO REIMBURSE THE OFFICE FOR THE COSTS OF CONSULTANTS RETAINED BY THE OFFICE TO CONDUCT:

(1) SAMPLING OF GROUNDWATER, SURFACE WATER, WETLANDS, AND SOIL;

(2) MONITORING TO DETECT ANY ADVERSE IMPACTS TO SENSITIVE SPECIES OF PLANTS AND ANIMALS AND ECOLOGICAL COMMUNITIES; AND

(3) INSPECTIONS TO DETECT ANY NON-NATIVE INVASIVE PLANT OR ANIMAL SPECIES THAT ARE INTRODUCED INTO THE PARK AS A RESULT OF THE PERMITTEE'S ACTIVITIES.

THE OFFICE SHALL DETERMINE THE AREAS TO BE SUBJECT TO SUCH SAMPLING, MONITORING, AND INSPECTIONS, WHICH SHALL BE UNDERTAKEN ANNUALLY, OR MORE FREQUENTLY IF DETERMINED APPROPRIATE BY THE OFFICE, UNTIL THE PERMITTEE HAS CONCLUDED OIL AND GAS EXPLORATION AND PRODUCTION ACTIVITIES AND COMPLETED THE RESTORATION REQUIREMENTS ESTABLISHED IN PARAGRAPH (H) OF THIS SUBDIVISION.

(G) THE PERMITTEE SHALL BE REQUIRED AT ITS EXPENSE TO TAKE CORRECTIVE ACTIONS TO ELIMINATE ANY ADVERSE IMPACTS RESULTING FROM THE PERMITTED

ACTIVITY TO THE PARK'S ROADS, FACILITIES AND INFRASTRUCTURE, OR TO THE PARK'S GROUNDWATER, SURFACE WATER, WETLANDS, SOIL, NATURAL RESOURCES, PLANT AND ANIMAL SPECIES AND ECOLOGICAL COMMUNITIES.

(H) THE PERMITTEE SHALL BE REQUIRED TO OBTAIN FINANCIAL SECURITY IN AN AMOUNT SUFFICIENT TO RESTORE TO THEIR PREVIOUS NATURAL CONDITION ALL AREAS AFFECTED BY THE PERMITTEE'S GROUND DISTURBANCE, CLEARING, DRILLING, ROAD CONSTRUCTION, AND INSTALLATION OF TRANSMISSION LINES, AFTER OIL AND GAS EXPLORATION, DRILLING, AND PRODUCTION ACTIVITIES HAVE CONCLUDED. RESTORATION SHALL INCLUDE BUT NOT BE LIMITED TO A REQUIREMENT THAT THE PERMITTEE REMOVE AND REFOREST ALL ROADS AND CLEARED AREAS.

(I) THE OFFICE SHALL INCLUDE ANY ADDITIONAL PERMIT CONDITIONS IT DEEMS NECESSARY TO AVOID OR MINIMIZE IMPACTS ON THE PARK'S RECREATIONAL, SCENIC AND NATURAL RESOURCES AND TO PROTECT THE HEALTH AND SAFETY OF PARK VISITORS AND EMPLOYEES.

4. OTHER REQUIREMENTS. THE REQUIREMENTS OF THIS SECTION SHALL BE IN ADDITION TO, AND SHALL NOT REPLACE OR AFFECT, ANY OTHER REQUIREMENTS FOR THE EXERCISE OF OIL AND GAS DRILLING RIGHTS, INCLUDING BUT NOT LIMITED TO REQUIREMENTS SET FORTH IN ARTICLE TWENTY-THREE OF THE ENVIRONMENTAL CONSERVATION LAW OR OTHER APPLICABLE STATE OR FEDERAL LAWS, PERMITS, ORDERS, OR REGULATIONS. NOTHING IN THIS SECTION SHALL AFFECT OR SUPERSEDE THE APPLICATION OF ARTICLE SEVEN OF THE PUBLIC SERVICE LAW TO THE SITING OF A MAJOR UTILITY TRANSMISSION FACILITY AS DEFINED THEREIN.

5. ENVIRONMENTAL REVIEW. THE OFFICE WILL SERVE AS LEAD AGENCY FOR REVIEW PURSUANT TO ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW FOR ALL ACTIONS INVOLVING EXPLORATION AND PRODUCTION OF PRIVATELY-CONTROLLED OIL AND GAS RESOURCES BENEATH STATE OWNED LANDS WITHIN ALLEGANY STATE PARK, INCLUDING APPLICATIONS FOR A PERMIT PURSUANT TO THIS SECTION. IN CONDUCTING SUCH REVIEW, THE OFFICE SHALL EVALUATE ALL POTENTIAL IMPACTS OF PROPOSED WELL DRILLING, ROAD CONSTRUCTION, CLEARING OF VEGETATION, AND OTHER RELATED ACTIVITIES IN TERMS OF CONSISTENCY WITH THE AGENCY'S MISSION AS SET FORTH IN SECTION 3.02 OF THIS CHAPTER.

6. ENFORCEMENT. ANY VIOLATION OF A TERM OR CONDITION OF A SURFACE ACCESS PERMIT GRANTED PURSUANT TO THIS SECTION SHALL BE GROUNDS FOR REVOCATION THEREOF. IN ADDITION, ANY PARTY ACTING IN VIOLATION OF SUCH A PERMIT, AND ANY PARTY ENGAGING IN OIL OR GAS EXPLORATION, DRILLING, OR PRODUCTION ACTIVITY WITHOUT HAVING OBTAINED A PERMIT AS REQUIRED BY THIS SECTION, SHALL BE SUBJECT TO INJUNCTION AND LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH DAY OF SUCH VIOLATION, OBTAINABLE IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL UPON REFERRAL BY THE COMMISSIONER OR ON HIS OR HER OWN INITIATIVE.

7. COMPENSATION OF LOST REVENUE. IN THE EVENT THAT ANY SPILL OR RELEASE OF OIL, GAS, OR OTHER SUBSTANCE PRODUCED OR TRANSPORTED IN ALLEGANY STATE PARK BY, OR ON BEHALF OF, ANY PERSON RECEIVING A PERMIT UNDER THIS SECTION RESULTS IN THE TEMPORARY CLOSING OF ALL OR PART OF ALLEGANY STATE PARK, SUCH PERSON SHALL BE LIABLE TO COMPENSATE THE OFFICE FOR ANY LOST REVENUE OR PARK USER FEES RESULTING FROM THE CLOSURE. SUCH COMPENSATION OF LOST REVENUE SHALL BE IN ADDITION TO ANY OTHER COSTS OR PENALTIES IMPOSED UNDER APPLICABLE LAWS, REGULATIONS, OR PERMIT CONDITIONS.

8. RULES AND REGULATIONS. THE COMMISSIONER, AFTER NOTICE AND PUBLIC HEARING, IS AUTHORIZED TO ADOPT, AMEND, REPEAL AND ENFORCE SUCH RULES AND REGULATIONS AS HE OR SHE SHALL DEEM NECESSARY OR DESIRABLE TO EFFECTUATE THE PROVISIONS AND INTENT OF THIS SECTION.

S 2. This act shall take effect immediately.