

6342

2011-2012 Regular Sessions

I N A S S E M B L Y

March 15, 2011

Introduced by M. of A. ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public buildings law, the general municipal law, the executive law, the tax law, the environmental conservation law and the state finance law, in relation to enacting the "bird-friendly buildings act"

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

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "bird-friendly buildings act".
3 S 2. Legislative findings. The legislature hereby finds that:
4 (a) a federal multi-agency report issued in 2009, entitled "The State
5 of the Birds, United States of America", provides the most comprehensive
6 assessment to date on the status of bird populations;
7 (b) the multi-agency report concludes that nearly one-third of this
8 nation's 800 bird species are endangered, threatened or in significant
9 decline;
10 (c) daytime and nighttime collisions with man-made structures are the
11 most significant, quantifiable causes of avian mortality and are
12 increasing with adverse effects being seen at a population level with
13 estimates ranging from several hundred million to one billion birds
14 dying from collisions annually in the United States;
15 (d) not only are birds beautiful, interesting and fascinating crea-
16 tures that are eagerly welcomed by millions of Americans into their
17 backyards every year, but birds also have an impact on the United States
18 and the New York state economies;
19 (e) the United States Fish and Wildlife Service has reported that
20 birdwatchers contribute thirty-six million dollars annually to the econ-
21 omy, and birds naturally provide billions of dollars worth of pest
22 control, benefitting farmers, forestry owners and consumers alike;

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

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1 (f) bird-friendly design features can be incorporated into new
2 construction and major renovation projects at no to minimal extra cost;
3 and existing buildings may be made bird-friendly through the use of
4 simple, low-cost adaptations; and

5 (g) these design features have already been implemented in buildings
6 constructed and renovated both in this state and throughout the country.

7 S 3. The public buildings law is amended by adding a new section 8-a
8 to read as follows:

9 S 8-A. USE OF BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES.

10 1. EACH PUBLIC BUILDING CONSTRUCTED, ALTERED OR ACQUIRED BY THE OFFICE
11 OF GENERAL SERVICES SHALL INCORPORATE, TO THE EXTENT PRACTICABLE AND AS
12 DETERMINED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION,
13 BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES.

14 2. IN ALL PUBLIC BUILDINGS, THE COMMISSIONER OF GENERAL SERVICES,
15 WHERE PRACTICABLE, SHALL:

16 (A) INCORPORATE BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES;
17 AND

18 (B) ADDRESS INTERIOR AND EXTERIOR LIGHTING AND REFLECTIVE GLASS
19 IMPACTS ON NATIVE BIRD SPECIES.

20 3. FOR THE PURPOSES OF THIS SECTION, "BIRD-FRIENDLY BUILDING MATERIALS
21 AND DESIGN FEATURES" MAY INCLUDE MATERIALS AND FEATURES RECOMMENDED BY:

22 (A) FEDERAL LAW, AND THE RULES AND REGULATIONS ADOPTED PURSUANT THERE-
23 TO;

24 (B) THE CITY OF CHICAGO'S "BIRD-SAFE BUILDING DESIGN GUIDE FOR NEW
25 CONSTRUCTION AND RENOVATION";

26 (C) THE CITY OF TORONTO'S "BIRD-FRIENDLY DEVELOPMENT GUIDELINES"; AND

27 (D) THE AMERICAN BIRD CONSERVANCY AND NEW YORK CITY AUDUBON'S
28 "BIRD-SAFE BUILDING GUIDELINES".

29 S 4. The general municipal law is amended by adding a new section 77-f
30 to read as follows:

31 S 77-F. USE OF BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES.

32 1. EACH PUBLIC BUILDING CONSTRUCTED, ALTERED OR ACQUIRED BY A MUNICIPAL
33 CORPORATION OR SCHOOL DISTRICT, OR ANY AGENCY THEREOF SHALL INCORPORATE,
34 TO THE EXTENT PRACTICABLE AND AS DETERMINED BY THE COMMISSIONER OF ENVI-
35 RONMENTAL CONSERVATION, BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN
36 FEATURES.

37 2. IN ALL PUBLIC BUILDINGS, A MUNICIPAL CORPORATION OR SCHOOL
38 DISTRICT, OR ANY AGENCY THEREOF, WHERE PRACTICABLE, SHALL:

39 (A) INCORPORATE BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES;
40 AND

41 (B) ADDRESS INTERIOR AND EXTERIOR LIGHTING, AND REFLECTIVE GLASS
42 IMPACTS ON NATIVE BIRD SPECIES.

43 3. FOR THE PURPOSES OF THIS SECTION, "BIRD-FRIENDLY BUILDING MATERIALS
44 AND DESIGN FEATURES" MAY INCLUDE MATERIALS AND FEATURES RECOMMENDED BY:

45 (A) FEDERAL LAW, AND THE RULES AND REGULATIONS ADOPTED PURSUANT THERE-
46 TO;

47 (B) THE CITY OF CHICAGO'S "BIRD-SAFE BUILDING DESIGN GUIDE FOR NEW
48 CONSTRUCTION AND RENOVATION";

49 (C) THE CITY OF TORONTO'S "BIRD-FRIENDLY DEVELOPMENT GUIDELINES"; AND

50 (D) THE AMERICAN BIRD CONSERVANCY AND NEW YORK CITY AUDUBON'S
51 "BIRD-SAFE BUILDING GUIDELINES".

52 S 5. Section 378 of the executive law is amended by adding a new
53 subdivision 17 to read as follows:

54 17. A. REQUIRE EVERY BUILDING, CONSTRUCTED ON OR AFTER THE EFFECTIVE
55 DATE OF THIS SUBDIVISION, WHICH HAS ONE THOUSAND SIX HUNDRED OR MORE
56 SQUARE FEET OF EXTERIOR GLASS TO INCORPORATE, TO THE EXTENT PRACTICABLE

1 AND AS DETERMINED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION,
2 BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES. ALL SUCH BUILDINGS
3 SHALL:

4 (I) INCORPORATE BIRD-FRIENDLY BUILDING MATERIALS AND DESIGN FEATURES;
5 AND

6 (II) ADDRESS INTERIOR AND EXTERIOR LIGHTING, AND REFLECTIVE GLASS
7 IMPACTS ON NATIVE BIRD SPECIES.

8 B. FOR THE PURPOSES OF THIS SUBDIVISION, "BIRD-FRIENDLY BUILDING MATE-
9 RIALS AND DESIGN FEATURES" MAY INCLUDE MATERIALS AND FEATURES RECOM-
10 MENDED BY:

11 (A) FEDERAL LAW, AND THE RULES AND REGULATIONS ADOPTED PURSUANT THERE-
12 TO;

13 (B) THE CITY OF CHICAGO'S "BIRD-SAFE BUILDING DESIGN GUIDE FOR NEW
14 CONSTRUCTION AND RENOVATION";

15 (C) THE CITY OF TORONTO'S "BIRD-FRIENDLY DEVELOPMENT GUIDELINES"; AND

16 (D) THE AMERICAN BIRD CONSERVANCY AND NEW YORK CITY AUDUBON'S
17 "BIRD-SAFE BUILDING GUIDELINES".

18 S 6. The tax law is amended by adding a new section 1104-a to read as
19 follows:

20 S 1104-A. REFLECTIVE WINDOW GLASS FEE. (A) IMPOSITION. IN ADDITION TO
21 ANY OTHER FEE OR TAX IMPOSED BY THIS ARTICLE OR ANY OTHER LAW, THERE IS
22 HEREBY IMPOSED AND THERE SHALL BE PAID A FEE OF TEN CENTS PER SQUARE
23 YARD OR PORTION THEREOF OF REFLECTIVE GLASS SOLD OR USED IN THIS STATE.

24 (B) ADMINISTRATION AND ENFORCEMENT. THE REFLECTIVE GLASS FEE IMPOSED
25 BY THIS SECTION SHALL BE ADMINISTERED AND COLLECTED IN A LIKE MANNER AS
26 THE TAX IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF
27 THIS PART. ALL PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO
28 THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAX IMPOSED BY
29 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART SHALL APPLY
30 TO THE REFLECTIVE GLASS FEE IMPOSED BY THIS SECTION SO FAR AS SUCH
31 PROVISIONS CAN BE MADE APPLICABLE TO SUCH REFLECTIVE GLASS FEE.

32 (C) DEPOSIT AND DISPOSITION OF REVENUE. NOTWITHSTANDING ANY PROVISION
33 OF LAW TO THE CONTRARY, THE FEES, INTEREST AND PENALTIES IMPOSED BY THIS
34 SECTION AND RECEIVED BY THE COMMISSIONER SHALL BE DEPOSITED MONTHLY INTO
35 THE "BIRD-FRIENDLY BUILDING FUND" ESTABLISHED PURSUANT TO SECTION NINE-
36 TY-THREE-A OF THE STATE FINANCE LAW.

37 S 7. The environmental conservation law is amended by adding a new
38 section 3-0121 to read as follows:

39 S 3-0121. BIRD-FRIENDLY BUILDING COUNCIL.

40 1. THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT A BIRD-FRIENDLY
41 BUILDING COUNCIL. SUCH COUNCIL SHALL BE COMPOSED OF NOT LESS THAN ELEVEN
42 NOR MORE THAN FIFTEEN MEMBERS, WHICH SHALL INCLUDE THE COMMISSIONER, WHO
43 SHALL BE THE CHAIR OF THE COUNCIL, AND NOT LESS THAN TEN, NOR MORE THAN
44 FOURTEEN MEMBERS APPOINTED BY THE COMMISSIONER. THE MEMBERS APPOINTED BY
45 THE COMMISSIONER SHALL INCLUDE PERSONS REPRESENTING THE FOLLOWING INTER-
46 ESTS: WILDLIFE CONSERVATION ORGANIZATIONS, STATE AND FEDERAL WILDLIFE
47 AGENCIES, ARCHITECTS, LANDSCAPE ARCHITECTS, WINDOW MANUFACTURERS AND
48 DISTRIBUTORS, COMMERCIAL BUILDING MANAGERS, AND ACADEMIA. THE WILDLIFE
49 CONSERVATION ORGANIZATIONS REPRESENTED ON THE COUNCIL SHALL INCLUDE THE
50 AMERICAN BIRD CONSERVANCY, NEW YORK CITY AUDUBON AND THE LONG ISLAND
51 AUDUBON COUNCIL. THE FEDERAL WILDLIFE AGENCY REPRESENTATION ON THE COUN-
52 CIL SHALL INCLUDE THE DIVISION OF MIGRATORY BIRD MANAGEMENT OF THE U.S.
53 FISH AND WILDLIFE SERVICE. THE MEMBERSHIP OF THE COUNCIL SHALL BE
54 BROADLY REPRESENTATIVE OF THE GEOGRAPHIC AREAS OF THE STATE. FURTHER-
55 MORE, THE MEMBERS OF THE COUNCIL SHALL RECEIVE NO COMPENSATION FOR THEIR
56 SERVICES BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES

1 INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS SECTION.
2 IN ADDITION, THE COMMISSIONER OF GENERAL SERVICES SHALL SERVE AS AN
3 EX-OFFICIO MEMBER OF THE COUNCIL.

4 2. THE BIRD FRIENDLY BUILDING COUNCIL SHALL:

5 A. DEVELOP SUCH RULES, REGULATIONS AND PROCEDURES AS NECESSARY FOR IT
6 TO EFFECTIVELY ADMINISTER ITS RESPONSIBILITIES;

7 B. ATTEMPT TO ASSESS AND QUANTIFY THE EXTENT AND MAGNITUDE OF THE
8 PROBLEM STATEWIDE CAUSED BY DIURNAL AND NOCTURNAL BIRDS COLLIDING WITH
9 BUILDINGS. THIS EFFORT SHALL IDENTIFY THOSE SPECIES MOST COMMONLY KILLED
10 DURING DAYTIME COLLISIONS, THOSE SPECIES MORE COMMONLY KILLED DURING
11 NIGHTTIME COLLISIONS AND SHALL INCLUDE AN ASSESSMENT ON SPECIES AT RISK
12 DUE TO RARITY AND ENDANGERMENT;

13 C. DEVELOP CRITERIA AND GUIDELINES FOR IDENTIFYING AND PRIORITIZING
14 EXISTING BUILDINGS WHICH POSE A DANGER TO BIRD SPECIES DUE TO THE THREAT
15 OF COLLISIONS;

16 D. IDENTIFY EXISTING AND EMERGING PRODUCTS, TECHNOLOGIES, STRATEGIES
17 AND CONCEPTS WHICH CAN REDUCE OR ELIMINATE BIRD MORTALITY FROM BUILDING
18 COLLISIONS;

19 E. IDENTIFY POTENTIAL FUNDING SOURCES, IN ADDITION TO THE PROCEEDS
20 FROM THE SALE OF THE MIGRATORY BIRD PROTECTION STAMP ESTABLISHED PURSU-
21 ANT TO SECTION 11-0307 OF THIS CHAPTER, TO FUND THE RETROFITTING AND/OR
22 REPLACEMENT OF WINDOWS OF EXISTING PROBLEMATIC BUILDINGS WHICH POSE A
23 THREAT TO BIRDS AND THE IMPLEMENTATION OF OTHER MITIGATIVE STRATEGIES;

24 F. RECOMMEND THE DISBURSEMENT OF FUNDS OBTAINED THROUGH THE WINDOW
25 GLASS FEE ESTABLISHED PURSUANT TO SECTION ELEVEN HUNDRED FOUR-A OF THE
26 TAX LAW AND THE PROCEEDS FROM THE SALE OF THE MIGRATORY BIRD PROTECTION
27 STAMP ESTABLISHED PURSUANT TO SECTION 11-0307 OF THIS CHAPTER, FOR
28 RETROFITTING AND/OR REPLACEMENT OF WINDOWS ON BUILDINGS IDENTIFIED
29 PURSUANT TO PARAGRAPH C OF THIS SUBDIVISION;

30 G. PROMOTE PUBLIC AWARENESS OF THIS ISSUE AND WHAT MEMBERS OF THE
31 PUBLIC CAN DO TO MITIGATE IMPACTS;

32 H. SUPPORT AND FUND ADDITIONAL RESEARCH TO BETTER UNDERSTAND PARTIC-
33 ULAR ASPECTS OF THE BUILDING-BIRD COLLISION ISSUE; AND

34 I. CONSULT WITH OTHER SUSTAINABLE BUILDING DESIGN ORGANIZATIONS.

35 S 8. Subdivision 2 of section 3-0301 of the environmental conservation
36 law is amended by adding a new paragraph dd to read as follows:

37 DD. ESTABLISH, IN CONSULTATION WITH THE BIRD-FRIENDLY BUILDING COUNCIL
38 ESTABLISHED PURSUANT TO SECTION 3-0121 OF THIS ARTICLE, CRITERIA TO
39 IDENTIFY AND PROVIDE FOR THE RETROFITTING OF BUILDINGS WHICH POSE A
40 THREAT TO BIRD POPULATIONS IN THE STATE.

41 S 9. Subdivisions 2 and 3 of section 11-0307 of the environmental
42 conservation law, subdivision 2 as added by chapter 494 of the laws of
43 1984 and subdivision 3 as amended by chapter 42 of the laws of 1991, are
44 amended to read as follows:

45 2. The department shall, by rule and regulation, establish the means
46 or method for creation of both voluntary migratory bird stamps and
47 migratory bird art prints, their administration, sale and distribution
48 and other matters relating to such voluntary stamps and art prints. The
49 department shall select appropriate works of art that will reflect
50 migratory bird species and/or aquatic ecosystem scenes. The department
51 may prepare or cause to be prepared voluntary migratory bird stamps and
52 prints for any year in excess of the number otherwise to be issued for
53 sale to collectors or other persons desiring to purchase such voluntary
54 stamps or prints. THE DEPARTMENT SHALL ANNUALLY PRINT AND MAKE AVAIL-
55 ABLE FOR SALE A UNIQUE MIGRATORY BIRD PROTECTION STAMP.

1 3. The department shall prepare or cause to be prepared voluntary
2 migratory bird stamps, INCLUDING THE MIGRATORY BIRD PROTECTION STAMP,
3 and shall furnish such migratory bird stamps annually to license issuing
4 agents and officers for issuance or sale in the same manner as other
5 types of licenses. The department shall, by rule and regulation, estab-
6 lish the fee for such voluntary stamps which shall not exceed five
7 dollars as a fee and fifty cents for the issuing agent or officer for a
8 stamp sold in the year in which it was issued. ALL MONEYS FROM THE SALE
9 OF THE MIGRATORY BIRD PROTECTION STAMP SHALL BE DEPOSITED IN THE "BIRD-
10 FRIENDLY BUILDING FUND" ESTABLISHED PURSUANT TO SECTION NINETY-THREE-A
11 OF THE STATE FINANCE LAW. The purchase of a stamp is voluntary and need
12 not be possessed in order to hunt migratory waterfowl.

13 S 10. The state finance law is amended by adding a new section 93-a to
14 read as follows:

15 S 93-A. BIRD-FRIENDLY BUILDING FUND. 1. THERE IS HEREBY ESTABLISHED
16 IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION
17 AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "BIRD-FRIENDLY BUILDING
18 FUND".

19 2. SUCH FUND SHALL CONSIST OF MONEYS PAID THERETO FROM THE REFLECTIVE
20 WINDOW GLASS FEE PURSUANT TO SECTION ELEVEN HUNDRED FOUR-A OF THE TAX
21 LAW, SALE OF THE MIGRATORY BIRD PROTECTION STAMP PURSUANT TO SECTION
22 11-0307 OF THE ENVIRONMENTAL CONSERVATION LAW, AND ALL OTHER MONEYS
23 APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR
24 SOURCE PURSUANT TO LAW.

25 3. MONEYS OF THE FUND FOLLOWING APPROPRIATION THEREOF, SHALL BE
26 EXPENDED PURSUANT TO PARAGRAPH DD OF SUBDIVISION TWO OF SECTION 3-0301
27 OF THE ENVIRONMENTAL CONSERVATION LAW.

28 S 11. This act shall take effect on the first of January next succeed-
29 ing the date on which it shall have become a law.