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

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I N A S S E M B L Y

February 29, 2012

Introduced by M. of A. SWEENEY, SAYWARD, ROSENTHAL, PAULIN, LIFTON, ROBERTS, LUPARDO, GUNTHER, JAFFEE, MAGNARELLI, ZEBROWSKI, SCHIMEL, PEOPLES-STOKES, MAISEL, GALEF, LINARES, WEPRIN -- Multi-Sponsored by -- M. of A. BOYLAND, CLARK, GLICK, GOTTFRIED, JACOBS, P. LOPEZ, MILLMAN, PERRY, P. RIVERA, THIELE -- read once and referred to the Committee on Environmental Conservation -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the environmental conservation law and the agriculture and markets law, in relation to nonnative animal and plant species

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

Section 1. Section 9-1709 of the environmental conservation law, as added by chapter 674 of the laws of 2007 and subdivisions 1 and 2 as amended by chapter 26 of the laws of 2008, is amended to read as follows:

S 9-1709. General powers and duties of the department.

1. THE DEPARTMENT, IN COOPERATION WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS, SHALL RESTRICT THE SALE, PURCHASE, POSSESSION, PROPAGATION, INTRODUCTION, IMPORTATION, TRANSPORT AND DISPOSAL OF INVASIVE SPECIES PURSUANT TO THIS SECTION. THE DEPARTMENT AND THE DEPARTMENT OF AGRICULTURE AND MARKETS IN CONSULTATION WITH THE COUNCIL, SHALL, AFTER PUBLIC HEARING, PROMULGATE JOINT REGULATIONS TO DEVELOP:

(A) A PERMIT FOR PROHIBITED SPECIES DISPOSAL, CONTROL, RESEARCH AND EDUCATION;

(B) A LIST OF PROHIBITED SPECIES, WHICH SHALL BE UNLAWFUL TO KNOWINGLY POSSESS WITH THE INTENT TO SELL, IMPORT, PURCHASE, TRANSPORT OR INTRODUCE;

(C) A LIST OF PROHIBITED SPECIES WHICH SHALL BE UNLAWFUL TO IMPORT, SELL, PURCHASE, PROPAGATE, TRANSPORT, OR INTRODUCE EXCEPT UNDER A PERMIT FOR DISPOSAL, CONTROL, RESEARCH, OR EDUCATION; AND

(D) A LIST OF REGULATED SPECIES WHICH SHALL BE LEGAL TO POSSESS, SELL, BUY, PROPAGATE AND TRANSPORT BUT MAY NOT BE KNOWINGLY INTRODUCED INTO A

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

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FREE-LIVING STATE OR INTRODUCED BY A MEANS THAT ONE KNEW OR SHOULD HAVE KNOWN WOULD LEAD TO THE INTRODUCTION INTO A FREE-LIVING STATE.

AS PART OF THE REGULATORY PROCESS, THE DEPARTMENTS AND THE COUNCIL SHALL CONSIDER ESTABLISHING GRACE PERIODS FOR PROHIBITED AND REGULATED SPECIES SO BUSINESSES CAN PLAN THE MANAGEMENT OF EXISTING STOCK.

2. For the purpose of carrying out the provisions of this title, the department in cooperation with the department of agriculture and markets shall have the authority, within funds available, to:

[1.] (A) establish, operate and maintain state-wide databases and clearinghouses for all taxa of invasive species that incorporate existing data from agencies and organizations in the state, as well as from nearby states, provinces, Canada, and the federal government. Such databases and clearinghouses may provide the aggregate data on-line in a GIS;

[2.] (B) coordinate state agency and public authority actions to do the following:

[(a)] (I) phasing out uses of invasive species;

[(b)] (II) expanding use of native species;

[(c)] (III) promoting private and local government use of native species as alternatives to invasive species; and

[(d)] (IV) wherever practical and where consistent with watershed and/or regional invasive species management plans, prohibiting and actively eliminating invasive species at project sites funded or regulated by the state; and

[3.] (C) in collaboration with the council, aid in the review and reform of relevant regulatory processes to remove unnecessary impediments to the restoration of invaded ecosystems.

S 2. Section 71-0703 of the environmental conservation law is amended by adding a new subdivision 9 to read as follows:

9. A. ANY PERSON WHO TRANSPORTS, SELLS, IMPORTS OR INTRODUCES INVASIVE SPECIES, IN VIOLATION OF THE REGULATIONS PROMULGATED PURSUANT TO SECTION 9-1709 OF THIS CHAPTER SHALL BE SUBJECT TO THE FOLLOWING:

FOR ANY FIRST VIOLATION IN LIEU OF A PENALTY THERE MAY BE ISSUED A WRITTEN WARNING BY THE DEPARTMENT AND THERE MAY ALSO BE ISSUED EDUCATION MATERIALS AT THE DISCRETION OF THE DEPARTMENT REGARDING REQUIREMENTS RELATED TO INVASIVE SPECIES. SUCH PERSON SHALL, HOWEVER, FOR ANY SUBSEQUENT VIOLATION THEREAFTER BE SUBJECT TO A FINE OF NO LESS THAN TWO HUNDRED FIFTY DOLLARS.

B. ANY NURSERY GROWER LICENSED PURSUANT TO ARTICLE FOURTEEN OF THE AGRICULTURE AND MARKETS LAW, ANY PERSON WHO OWNS OR OPERATES A PUBLIC VESSEL AS SUCH TERM IS DEFINED IN PARAGRAPH (A) OF SUBDIVISION SIX OF SECTION TWO OF THE NAVIGATION LAW, OR ANY PERSON WHO OWNS OR OPERATES A COMMERCIAL FISHING VESSEL WHO TRANSPORTS, SELLS, IMPORTS OR INTRODUCES INVASIVE SPECIES IN VIOLATION OF THE REGULATIONS PROMULGATED PURSUANT TO SECTION 9-1709 OF THIS CHAPTER, SHALL BE SUBJECT TO A FINE OF NOT LESS THAN SIX HUNDRED DOLLARS UPON THE FIRST PENALTY. UPON THE SECOND PENALTY SUCH PERSON SHALL BE SUBJECT TO A FINE OF NOT LESS THAN TWO THOUSAND DOLLARS. UPON A SUBSEQUENT PENALTY AND AFTER A HEARING OR OPPORTUNITY TO BE HEARD UPON DUE NOTICE THE FOLLOWING PENALTIES MAY APPLY: (I) SUCH NURSERY GROWER MAY BE SUBJECT TO THE REVOCATION PROCEDURES OF SECTION ONE HUNDRED SIXTY-THREE-C OF THE AGRICULTURE AND MARKETS LAW (II) SUCH PERSON'S VESSEL REGISTRATION MAY BE SUSPENDED OR (III) SUCH PERSON'S FISHING PERMIT MAY BE REVOKED BY THE DEPARTMENT.

S 3. Section 167 of the agriculture and markets law is amended by adding a new subdivision 3-a to read as follows:

3-A. THE DEPARTMENT, IN COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL RESTRICT THE SALE, PURCHASE, POSSESSION, PROPAGATION, INTRODUCTION, IMPORTATION, TRANSPORT AND DISPOSAL OF INVASIVE SPECIES PURSUANT TO SECTION 9-1709 OF THE ENVIRONMENTAL CONSERVATION LAW.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the department of environmental conservation and the department of agriculture and markets shall promulgate regulations to implement the provisions of this act. Such regulations shall be completed on or before September 1, 2013.