

4720

2011-2012 Regular Sessions

I N S E N A T E

April 15, 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:

1 Section 1. The parks, recreation and historic preservation law is
2 amended by adding a new section 13.31 to read as follows:
3 S 13.31 OIL AND GAS DRILLING IN ALLEGANY STATE PARK. 1. LEGISLATIVE
4 FINDINGS AND DECLARATION. THE LEGISLATURE FINDS AND DECLARES THAT ALLE-
5 GANY STATE PARK HARBORS UNIQUE AND IRREPLACEABLE NATURAL AND SCENIC
6 RESOURCES AND PROVIDES AN EXTENSIVE VARIETY OF RECREATIONAL AND EDUCA-
7 TIONAL OPPORTUNITIES FOR NEW YORK RESIDENTS AND VISITORS. THE PARK IS
8 LOCATED IN A GEOLOGICALLY DISTINCT, UNGLACIATED AREA WITH UNIQUE TERRES-
9 TRIAL, FRESHWATER AND OLD GROWTH FOREST ECOSYSTEMS THAT WARRANT SPECIAL
10 PROTECTION, AND IS HOME TO NUMEROUS RARE, THREATENED AND ENDANGERED
11 SPECIES OF PLANTS AND WILDLIFE. THE PARK'S SIXTY-FIVE THOUSAND ACRES ARE
12 THE LARGEST TRACT OF INTACT, UNFRAGMENTED FOREST LAND IN THE WESTERN
13 HALF OF THE STATE, INCLUDING MATURE SECOND-GROWTH AS WELL AS EXTENSIVE
14 OLD-GROWTH FORESTS. THESE FEATURES ARE AN INVALUABLE AND IRREPLACEABLE
15 PART OF THE STATE'S NATURAL HERITAGE WHICH THE STATE IS OBLIGATED TO
16 PRESERVE FOR FUTURE GENERATIONS.
17 THE LEGISLATURE FURTHER FINDS AND DECLARES THAT A UNIQUE CIRCUMSTANCE
18 EXISTS IN ALLEGANY STATE PARK WHEREBY PRIVATE ENTITIES CONTROL SUBSUR-
19 FACE OIL AND GAS RIGHTS BENEATH PORTIONS OF THE PARK. OWNERSHIP OF SUCH
20 SUBSURFACE OIL AND GAS RIGHTS WAS SEVERED AND RETAINED IN PRIVATE OWNER-
21 SHIP PRIOR TO THE ACQUISITION AND CREATION OF THE PARK BY THE STATE OF
22 NEW YORK IN THE EARLY TWENTIETH CENTURY. IT IS THE PURPOSE OF THIS
23 SECTION TO ENSURE THAT ANY EXPLORATION, DRILLING, OR PRODUCTION ASSOCI-
24 ATED 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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1 PARK, INCLUDING ALL ACTIVITIES NECESSARY TO OBTAIN ACCESS TO SUBSURFACE
2 OIL AND GAS, BE UNDERTAKEN WITH THE STRICTEST POSSIBLE OVERSIGHT TO
3 MINIMIZE ADVERSE IMPACTS ON THE PARK'S NATURAL, SCENIC, AND RECREATIONAL
4 RESOURCES AND THE PUBLIC'S ACCESS TO THEM AND ENJOYMENT THEREOF. IT IS
5 INTENDED THAT THE PROVISIONS OF THIS SECTION BE LIBERALLY CONSTRUED AND
6 APPLIED IN FURTHERANCE OF THIS PURPOSE.

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

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

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

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

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

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

34 (E) A DETAILED DESCRIPTION OF ALL SURFACE DISTURBANCE ASSOCIATED WITH
35 THE PROPOSED EXPLORATION AND PRODUCTION OF OIL OR GAS, INCLUDING BUT NOT
36 LIMITED TO THE LOCATION AND SPECIFICATIONS OF ALL ROADS PROPOSED TO BE
37 CONSTRUCTED, ALL PROPOSED WELL DRILLING LOCATIONS, AND THE LOCATION AND
38 AMOUNT OF PROPOSED TREE AND VEGETATION REMOVAL, AND THE METHODS TO BE
39 USED IN SUCH ACTIVITIES;

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

43 (G) AN ESTIMATE OF THE AMOUNT OF WASTE PRODUCTS BY TYPE EXPECTED TO
44 RESULT FROM CONSTRUCTION, EXPLORATION AND PRODUCTION AND A DESCRIPTION
45 OF HOW SUCH WASTE WILL BE HANDLED AND DISPOSED OF;

46 (H) A DESCRIPTION OF THE METHODS TO BE USED TO CONTROL STORMWATER FLOW
47 AND EROSION;

48 (I) DISTANCES FROM STREAMS OF PROPOSED WORK, IDENTIFICATION OF
49 AFFECTED STREAMS AND METHODS OF STREAM CROSSINGS, IF ANY;

50 (J) ESTIMATED NUMBER, SPECIES AND DIAMETER OF TREES TO BE REMOVED AND
51 METHOD OF REMOVAL;

52 (K) A DETAILED DESCRIPTION AND TIMELINE OF STEPS THAT WILL BE TAKEN TO
53 RECLAIM THE AFFECTED SURFACE AREA AND RESTORE IT TO ITS PREVIOUS NATURAL
54 CONDITION ONCE DRILLING AND PRODUCTION ACTIVITIES HAVE CEASED. SUCH
55 DESCRIPTION SHALL DESCRIBE INTERIM RESTORATION ACTIVITIES THAT SHALL
56 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;

(L) 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

(M) 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 PERMIT SHALL INCLUDE SUCH CONDITIONS ON THE MANAGEMENT OF FOREST RESOURCES, AND CONSTRUCTION AND MAINTENANCE OF ACCESS ROADS, WELL SITES AND TRANSMISSION LINES, AS THE OFFICE DEEMS NECESSARY TO PROTECT PARK RESOURCES.

(F) 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.

(G) 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 (I) OF THIS SUBDIVISION.

(H) 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.

(I) 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.

(J) THE PERMIT SHALL INCLUDE REQUIREMENTS FOR THE AMOUNT AND TYPE OR TYPES OF INSURANCE TO BE PROCURED AND MAINTAINED BY THE PERMITTEE.

(K) 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

1 THIS SECTION RESULTS IN THE TEMPORARY CLOSING OF ALL OR PART OF ALLEGANY
2 STATE PARK, SUCH PERSON SHALL BE LIABLE TO COMPENSATE THE OFFICE FOR ANY
3 LOST REVENUE OR PARK USER FEES RESULTING FROM THE CLOSURE. SUCH COMPEN-
4 SATION OF LOST REVENUE SHALL BE IN ADDITION TO ANY OTHER COSTS OR PENAL-
5 TIES IMPOSED UNDER APPLICABLE LAWS, REGULATIONS, OR PERMIT CONDITIONS.
6 8. RULES AND REGULATIONS. THE COMMISSIONER IS AUTHORIZED TO ADOPT
7 RULES AND REGULATIONS NECESSARY OR DESIRABLE TO EFFECTUATE THE
8 PROVISIONS OF THIS SECTION.
9 S 2. This act shall take effect immediately.