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

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2013-2014 Regular Sessions

I N S E N A T E

March 19, 2013

Introduced by Sen. BALL -- (at request of the Division of Homeland Security and Emergency Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the penal law, in relation to enhancing fire safety on state property

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

Section 1. Subdivision 19 of section 156 of the executive law, as renumbered by chapter 615 of the laws of 2006, is renumbered subdivision 20 and a new subdivision 19 is added to read as follows:

19. ISSUE PERMITS AND ENFORCE THE PROVISIONS OF ARTICLE FOUR HUNDRED FIVE OF THE PENAL LAW FOR THE PUBLIC DISPLAYS OF FIREWORKS AND INDOOR PYROTECHNICS ON OR WITHIN STATE PROPERTY, UNLESS SUCH AUTHORITY HAS BEEN DELEGATED PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY THE OFFICE OF FIRE PREVENTION AND CONTROL.

S 2. Section 405.00 of the penal law, subdivision 1 as amended by chapter 661 of the laws of 1972 and subdivisions 2, 3, 3-a and 4 as amended by section 21 of part CC of chapter 57 of the laws of 2009, is amended to read as follows:

S 405.00 Permits for public displays of fireworks.

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section[, which agency in the territory within a state park shall be the state agency having custody and control thereof, in the]. THE PERMIT AUTHORITY ON OR WITHIN STATE PROPERTY SHALL BE THE OFFICE OF FIRE PREVENTION AND CONTROL. THE PERMIT AUTHORITY FOR territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed[,]. THE PERMIT AUTHORITY in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall

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

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be an officer designated for the purpose by the legislative body thereof[,]. THE PERMIT AUTHORITY in a village shall be an officer designated for the purpose by the board of trustees thereof and THE PERMIT AUTHORITY in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for fireworks displays. Notwithstanding the provisions of section 270.00 of this chapter, the permit authority [of a] FOR state [park] PROPERTY, county [park, city, village or town] PARKS, CITIES, VILLAGES, OR TOWNS may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article sixteen of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The number and kind of fireworks to be discharged.

(e) The manner and place of storage of such fireworks prior to the display.

(f) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(g) Such other information as the permit authority may deem necessary to protect persons or property.

3. Applications for permits. All applications for permits for the display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired be in accordance with the rules promulgated by the commissioner of labor pursuant to section four hundred sixty-two of the labor law and that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two approved type fire extinguishers shall be kept at as widely separated points as possible within the actual area of the display. FOR ANY APPLICATIONS MADE FOR THE DISPLAY OF FIREWORKS ON STATE PROPERTY, THE STATE FIRE ADMINISTRATOR SHALL COORDINATE THE ISSUANCE OF SUCH PERMITS WITH THE HEAD OF THE POLICE OR FIRE DEPARTMENT OR BOTH, WHERE THERE ARE SUCH DEPARTMENTS. The legislative body of a [state park,] county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

3-a. Notwithstanding the provisions of subdivision three of this section, no permit may be issued to conduct a display of fireworks upon any property where the boundary line of such property is less than five hundred yards from the boundary line of any property which is owned, leased or operated by any breeder as defined in subdivision four of section two hundred fifty-one of the racing, pari-mutuel wagering and breeding law.

4. Bonds. Before granting and issuing a permit for a display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is a state [park] ENTITY, county park, city, village or town, in a sum to be fixed by the permit authority, which, however, shall not be less than one million dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his OR HER agents, employees, contractors or subcontractors. Such bond shall run to the state [park,] IF THE PERMIT IS GRANTED FOR A DISPLAY ON STATE PROPERTY, OR TO THE county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes provided in this section.

5. Local ordinances superseded. All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

S 3. Paragraph n of subdivision 1 and subdivision 4 of section 405.10 of the penal law, as added by chapter 584 of the laws of 2003, are amended to read as follows:

n. Permit authority. The agency authorized to grant and issue the permits provided for in this section[, which agency in the territory within a state park shall be the state agency having custody and control thereof] ON OR WITHIN STATE PROPERTY SHALL BE THE OFFICE OF FIRE PREVENTION AND CONTROL, in the territory within a county park shall be the county park commission, or such other agency having jurisdiction, control, and/or operation of the parks or parkways within which any pyrotechnics are to be used, in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof, in a village shall be an officer designated for the purpose by the board of trustees thereof, and, in the territory of a town outside of villages, shall be an officer designated for the purpose by the town board thereof.

4. Bonds. Before granting and issuing a permit for a use of pyrotechnics as provided in this section, the permit authority shall require an adequate bond from the applicant therefor, unless such applicant is a state [park] ENTITY, county park, city, village, or town, or from the person to whom a contract for such use shall be awarded, in a sum to be

fixed by the permit authority, which, however, shall not be less than five hundred thousand dollars, conditioned for the payment of all damages which may be caused to a person or persons or to property by reason of the use so permitted and arising from any acts of the permittee, his or her agents, employees, contractors, or subcontractors. Such bond shall run to the owner of the facility for which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors, or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes herein provided.

S 4. This act shall take effect immediately.