

7408

2013-2014 Regular Sessions

I N A S S E M B L Y

May 15, 2013

Introduced by M. of A. ENGLEBRIGHT, DUPREY -- (at request of the Division of Homeland Security and Emergency Services) -- read once and referred to the Committee on Governmental Operations

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:

1 Section 1. Subdivision 19 of section 156 of the executive law, as
2 renumbered by chapter 615 of the laws of 2006, is renumbered subdivision
3 20 and a new subdivision 19 is added to read as follows:
4 19. ISSUE PERMITS AND ENFORCE THE PROVISIONS OF ARTICLE FOUR HUNDRED
5 FIVE OF THE PENAL LAW FOR THE PUBLIC DISPLAYS OF FIREWORKS AND INDOOR
6 PYROTECHNICS ON OR WITHIN STATE PROPERTY, UNLESS SUCH AUTHORITY HAS BEEN
7 DELEGATED PURSUANT TO THE RULES AND REGULATIONS PROMULGATED BY THE
8 OFFICE OF FIRE PREVENTION AND CONTROL.
9 S 2. Section 405.00 of the penal law, subdivision 1 as amended by
10 chapter 661 of the laws of 1972 and subdivisions 2, 3, 3-a and 4 as
11 amended by section 21 of part CC of chapter 57 of the laws of 2009, is
12 amended to read as follows:
13 S 405.00 Permits for public displays of fireworks.
14 1. Definition of "permit authority." The term "permit authority," as
15 used in this section, means and includes the agency authorized to grant
16 and issue the permits provided in this section[, which agency in the
17 territory within a state park shall be the state agency having custody
18 and control thereof, in the]. THE PERMIT AUTHORITY ON OR WITHIN STATE
19 PROPERTY SHALL BE THE OFFICE OF FIRE PREVENTION AND CONTROL. THE PERMIT
20 AUTHORITY FOR territory within a county park shall be the county park
21 commission, or such other agency having jurisdiction, control and/or
22 operation of the parks or parkways within which any fireworks are to be
23 displayed[,]. THE PERMIT AUTHORITY in a city shall be the duly consti-
24 tuted 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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1 be an officer designated for the purpose by the legislative body there-
2 of[,]. THE PERMIT AUTHORITY in a village shall be an officer designated
3 for the purpose by the board of trustees thereof and THE PERMIT AUTHORI-
4 TY in the territory of a town outside of villages shall be an officer
5 designated for the purpose by the town board thereof.

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

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

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

23 (c) The exact location planned for the display.

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

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

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

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

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

1 3-a. Notwithstanding the provisions of subdivision three of this
2 section, no permit may be issued to conduct a display of fireworks upon
3 any property where the boundary line of such property is less than five
4 hundred yards from the boundary line of any property which is owned,
5 leased or operated by any breeder as defined in subdivision four of
6 section two hundred fifty-one of the racing, pari-mutuel wagering and
7 breeding law.

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

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

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

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

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

1 fixed by the permit authority, which, however, shall not be less than
2 five hundred thousand dollars, conditioned for the payment of all
3 damages which may be caused to a person or persons or to property by
4 reason of the use so permitted and arising from any acts of the permit-
5 tee, his or her agents, employees, contractors, or subcontractors. Such
6 bond shall run to the owner of the facility for which the permit is
7 granted and issued and shall be for the use and benefit of any person or
8 persons or any owner or owners of any property so injured or damaged,
9 and such person or persons or such owner or owners are hereby authorized
10 to maintain an action thereon, which right of action also shall accrue
11 to the heirs, executors, administrators, successors, or assigns of such
12 person or persons or such owner or owners. The permit authority may
13 accept, in lieu of such bond, an indemnity insurance policy with liabil-
14 ity coverage and indemnity protection equivalent to the terms and condi-
15 tions upon which such bond is predicated and for the purposes herein
16 provided.

17 S 4. This act shall take effect immediately.