

8027

I N   S E N A T E

June 6, 2016

---

Introduced by Sens. LITTLE, AMEDORE, BONACIC, FARLEY, GRIFFO, SEWARD --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Rules

AN ACT to amend the environmental conservation law and the state finance  
law, in relation to the regional land banks for projects on state land  
in the forest preserve

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

1     Section 1. The environmental conservation law is amended by adding a  
2     new section 9-0309 to read as follows:  
3     S 9-0309. USE OF CERTAIN STATE LANDS IN FOREST PRESERVE COUNTIES FOR  
4           PUBLIC UTILITIES AND REGIONAL LAND BANKS FOR PROJECTS ON  
5           STATE LANDS.  
6     1. DEFINITIONS. FOR PURPOSES OF THIS SECTION:  
7     A. "ENVIRONMENTAL INFRASTRUCTURE" MEANS FIRE HYDRANTS, FIRE  
8     SUPPRESSION LINES AND STORMWATER MANAGEMENT STRUCTURES.  
9     B. "HIGHWAY" MEANS A TOWN HIGHWAY, AS DEFINED IN PARAGRAPH FIVE OF  
10    SECTION THREE OF THE HIGHWAY LAW, IN EXISTENCE ON JANUARY FIRST, TWO  
11    THOUSAND FIFTEEN AND WHICH IS LISTED ON THE LOCAL HIGHWAY INVENTORY  
12    MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION, OR A STATE HIGHWAY, AS  
13    DEFINED IN SUBDIVISIONS ONE, TWO AND THREE OF SECTION THREE OF THE HIGH-  
14    WAY LAW, OR A COUNTY ROAD, AS DEFINED IN SUBDIVISION FOUR OF SECTION  
15    THREE OF THE HIGHWAY LAW.  
16    C. "PROJECT SPONSOR" MEANS A TOWN, A COUNTY, A PUBLIC UTILITY COMPANY,  
17    A PUBLIC WATER SUPPLIER OR, FOR PURPOSES OF A BICYCLE PATH, THE DEPART-  
18    MENT OF TRANSPORTATION.  
19    D. "PUBLIC UTILITY COMPANY" SHALL HAVE THE SAME MEANING AS SUCH TERM  
20    IS DEFINED IN SECTION TWO OF THE PUBLIC SERVICE LAW, AND FOR PURPOSES OF  
21    PUBLIC UTILITY LINE PROJECTS, AS DEFINED IN SUBPARAGRAPH FOUR OF PARA-  
22    GRAPH E OF THIS SUBDIVISION, SHALL INCLUDE A PUBLIC WATER SUPPLIER, A  
23    TOWN OR A COUNTY.  
24    E. "PUBLIC UTILITY LINE" MEANS:  
25    (1) A LINE THAT CONVEYS, TRANSPORTS OR DISTRIBUTES STEAM OR ELECTRIC-  
26    ITY FOR LIGHT, HEAT OR POWER;

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

LBD15754-01-6

1 (2) A COMMUNICATION LINE, INCLUDING A TELEPHONE OR TELEGRAPH LINE;

2 (3) BROADBAND, INCLUDING COAXIAL CABLE, OPTICAL CABLE, OPTICAL FIBER  
3 AND TWISTED PAIR; OR

4 (4) A WATER LINE, SEWER LINE AND WATER SYSTEM FOR DOMESTIC, COMMERCIAL  
5 OR PUBLIC USES.

6 PUBLIC UTILITY LINE SHALL INCLUDE ALL APPURTENANT FACILITIES, INCLUD-  
7 ING POLES AND CONDUITS, NECESSARY TO SUPPORT SUCH LINE.

8 F. "PUBLIC WATER SUPPLIER" MEANS A COUNTY OR TOWN IMPROVEMENT DISTRICT  
9 ESTABLISHED TO PROVIDE PUBLIC WATER SUPPLY OR ANY PUBLIC BENEFIT CORPO-  
10 RATION OR PUBLIC AUTHORITY ESTABLISHED PURSUANT TO STATE LAW OR ANY  
11 AGENCY OF THE STATE OR THE CITY OF NEW YORK WHICH IS EMPOWERED TO  
12 CONSTRUCT AND OPERATE A MUNICIPAL WATER MANAGEMENT FACILITY, AS DEFINED  
13 IN SECTION TWELVE HUNDRED EIGHTY-ONE OF THE PUBLIC AUTHORITIES LAW.

14 G. "STATE LANDS" MEANS LANDS OWNED BY THE STATE IN FOREST PRESERVE  
15 COUNTIES THAT ARE UNDER THE JURISDICTION OF THE DEPARTMENT.

16 H. "STORMWATER MANAGEMENT STRUCTURE" MEANS DEVICES WHICH ARE ENGI-  
17 NEERED AND CONSTRUCTED TO PROVIDE STORAGE AND TREATMENT OF STORMWATER  
18 RUNOFF, INCLUDING PONDS, WETLANDS, OPEN CHANNELS, INFILTRATION PRACTICES  
19 AND FILTERING PRACTICES.

20 I. "WATER SUPPLY PROJECTS" MEANS DRINKING WATER WELLS AND NECESSARY  
21 APPURTENANCES THERETO.

22 J. "WIDTH OF A HIGHWAY" MEANS THE ENTIRE DRIVING SURFACE OF THE HIGH-  
23 WAY, PLUS THE WIDTH OF THE CLEARED, REGULARLY MAINTAINED AREA ADJACENT  
24 TO THE DRIVING SURFACE, OR THIRTY FEET FROM THE CENTER LINE OF A TWO  
25 LANE HIGHWAY OR THIRTY FEET FROM THE MIDDLE OF THE PASSING LANE NEAREST  
26 THE SHOULDER OF A FOUR LANE HIGHWAY, WHICHEVER IS LESS, EXCEPT FOR ON  
27 THE STATE HIGHWAY SYSTEM WHERE DETERMINED OTHERWISE BY THE DEPARTMENT OF  
28 TRANSPORTATION.

29 2. A PUBLIC UTILITY LINE MAY BE BURIED OR CO-LOCATED BY A MUNICIPALITY  
30 OR A PUBLIC UTILITY COMPANY WITHIN THE WIDTH OF A HIGHWAY WHERE THE  
31 HIGHWAY TRAVERSES STATE LANDS, SUBJECT TO THE APPROVAL BY THE DEPARTMENT  
32 IN THE FORM OF A CONSENT TO OCCUPY AND ANY REQUIRED AUTHORIZATION FROM  
33 THE DEPARTMENT OF TRANSPORTATION TO ENSURE COMPLIANCE WITH STATE AND  
34 FEDERAL LAW, RULES AND REGULATIONS. ESSENTIAL ABOVE GRADE INFRASTRUCTURE  
35 DIRECTLY RELATED TO AND NECESSARY FOR SUCH BURIED OR CO-LOCATED PUBLIC  
36 UTILITY LINES MAY BE LOCATED WITHIN THE WIDTH OF SUCH HIGHWAYS.

37 A. PRIOR TO DEPARTMENT REVIEW AND APPROVAL, A PROPOSAL TO BURY OR  
38 CO-LOCATE A NEW UTILITY LINE PURSUANT TO THIS SECTION MUST RECEIVE  
39 APPROVAL BY RESOLUTION OF THE TOWN BOARD OR BOARDS OF THE TOWN OR TOWNS  
40 IN WHICH THE UTILITY LINE IS PROPOSED.

41 B. IF THE PROPOSED UTILITY LINE WILL UTILIZE A TOWN OR COUNTY HIGHWAY,  
42 THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH A CERTIFICATION FROM THE  
43 TOWN OR COUNTY RESPECTIVELY THAT THE AREA WHERE THE UTILITY LINE WILL BE  
44 PLACED IS BENEATH THE DRIVING SURFACE OR IN THE CLEARED, REGULARLY MAIN-  
45 TAINED AREA ADJACENT TO THE DRIVING SURFACE.

46 C. NO COMPENSATION SHALL BE REQUIRED TO BE PROVIDED TO THE STATE FOR  
47 APPROVAL TO BURY OR CO-LOCATE A UTILITY LINE IN THE WIDTH OF A HIGHWAY,  
48 EXCEPT AS MAY BE REQUIRED BY THE HIGHWAY LAW, THE TRANSPORTATION CORPO-  
49 RATIONS LAW, OR ANY OTHER STATE OR FEDERAL LAW, RULE OR REGULATION.

50 D. THE UTILITY LINE OWNER SHALL SUBMIT AN APPLICATION FOR A CONSENT TO  
51 OCCUPY AND SURVEY MAP DELINEATING THE LAND TO BE USED FOR THE PUBLIC  
52 UTILITY PURPOSES, PREPARED TO STANDARDS OF THE DEPARTMENT.

53 3. A BICYCLE PATH MAY BE CONSTRUCTED AND MAINTAINED BY A PROJECT SPON-  
54 SOR WITHIN THE WIDTH OF A HIGHWAY THAT TRAVERSES STATE LANDS, SUBJECT TO  
55 APPROVAL BY THE DEPARTMENT IN THE FORM OF A CONSENT TO OCCUPY AND ANY  
56 REQUIRED AUTHORIZATION FROM THE DEPARTMENT OF TRANSPORTATION TO ENSURE

COMPLIANCE WITH STATE AND FEDERAL LAW, RULES AND REGULATIONS. THE PROJECT PROPONENT SHALL SUBMIT A SURVEY MAP, PREPARED TO STANDARDS OF THE DEPARTMENT, OF THE LANDS WHERE THE BICYCLE PATH WILL BE CONSTRUCTED.

4. A. THERE IS HEREBY CREATED AN ADIRONDACK REGIONAL LAND BANK AND A CATSKILL REGIONAL LAND BANK. THE ADIRONDACK REGIONAL LAND BANK SHALL BE FIVE HUNDRED ACRES OF STATE LANDS WHICH SHALL BE AVAILABLE IN THE COUNTIES OF CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, HERKIMER, LEWIS, ONEIDA, SARATOGA, SAINT LAWRENCE, WARREN AND WASHINGTON. THE CATSKILL REGIONAL LAND BANK SHALL BE TWO HUNDRED FIFTY ACRES OF STATE LANDS WHICH SHALL BE AVAILABLE IN THE COUNTIES OF DELAWARE, GREENE, SULLIVAN AND ULSTER.

B. SUBJECT TO REVIEW AND APPROVAL BY THE DEPARTMENT AND ANY REQUIRED AUTHORIZATION FROM THE DEPARTMENT OF TRANSPORTATION TO ENSURE COMPLIANCE WITH STATE AND FEDERAL LAW, RULES AND REGULATIONS, A PROJECT SPONSOR MAY APPLY TO USE AVAILABLE ACREAGE FROM A REGIONAL LAND BANK FOR THE FOLLOWING:

(1) ENVIRONMENTAL INFRASTRUCTURE LOCATED WITHIN ONE HUNDRED FEET OF A HIGHWAY;

(2) TO RELOCATE, RECONSTRUCT AND MAINTAIN EXISTING TOWN AND COUNTY HIGHWAYS FOR THE PURPOSE OF ELIMINATING THE HAZARDS OF DANGEROUS CURVES AND GRADES AND TO ADDRESS DRAINAGE PROBLEMS ON SUCH HIGHWAYS PROVIDED THAT NO SINGLE RELOCATED PORTION OF A HIGHWAY MAY BE LONGER THAN ONE-HALF MILE IN LENGTH ON STATE LANDS WITHOUT PRIOR APPROVAL BY THE LEGISLATURE AND PROVIDED FURTHER THAT NO SINGLE RELOCATED PORTION OF A HIGHWAY MAY BE LONGER THAN ONE MILE IN LENGTH;

(3) CONSTRUCTION, RECONSTRUCTION, RELOCATION OR IMPROVEMENT OF A BRIDGE, OR BRIDGE INFRASTRUCTURE;

(4) THE CONSTRUCTION AND MAINTENANCE OF A BICYCLE PATH;

(5) INSTALLATION OF ANY PUBLIC UTILITY LINES AND ASSOCIATED INFRASTRUCTURE LOCATED WITHIN ONE HUNDRED FEET OF A HIGHWAY; AND

(6) WATER SUPPLY PROJECTS LOCATED WITHIN FIVE HUNDRED FEET OF A HIGHWAY, IF IT IS NECESSARY TO COMPLY WITH A SPECIFIC DIRECTIVE TO ADDRESS PUBLIC HEALTH OR ENVIRONMENTAL IMPACTS.

C. AN APPLICATION FOR A PROPOSAL SHALL INCLUDE A SURVEY MAP, PREPARED TO THE STANDARDS OF THE DEPARTMENT, A NARRATIVE ABOUT THE PROJECT, A JUSTIFICATION, AND ESTIMATES OF NEEDED ACREAGE. THE DEPARTMENT SHALL HOLD A NON-ADJUDICATORY PUBLIC HEARING ON THE PROJECT, AT WHICH THE PUBLIC SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD. NOTICE OF ANY SUCH HEARING AND PUBLIC COMMENT SHALL BE PROVIDED THIRTY CALENDAR DAYS IN ADVANCE AND SHALL BE PUBLISHED IN THE STATE REGISTER, THE ENVIRONMENTAL NOTICE BULLETIN AND IN A NEWSPAPER HAVING GENERAL CIRCULATION IN THE COUNTY WHERE THE FOREST PRESERVE LANDS IN QUESTION ARE LOCATED.

D. ACREAGE FROM A REGIONAL LAND BANK MAY BE UTILIZED FOR A PROJECT AUTHORIZED BY THIS SUBDIVISION ONLY WHEN THE DEPARTMENT HAS DETERMINED: THERE IS NO FEASIBLE ALTERNATIVE ON LAND NOT OWNED BY THE STATE; THE PROJECT WILL MINIMIZE ENVIRONMENTAL IMPACTS TO THE MAXIMUM EXTENT PRACTICABLE; AND THE PROPOSAL WILL NOT ADVERSELY IMPACT LANDS WITH RECOGNIZED CRITICAL ENVIRONMENTAL OR RECREATIONAL VALUE, AS DETERMINED BY THE DEPARTMENT BASED ON A RESOURCE INVENTORY AND ASSESSMENT.

PROPOSALS FOR USE OF LAND FROM A LAND BANK SHALL BE SUBJECT TO PUBLIC REVIEW AND COMMENT.

E. NO INDIVIDUAL PROJECT SHALL BE PERMITTED TO UTILIZE MORE THAN FIVE ACRES FROM A LAND BANK. NO MORE THAN TEN ACRES FROM A LAND BANK MAY BE UTILIZED BY ANY INDIVIDUAL TOWN WITHOUT PRIOR APPROVAL FROM THE LEGISLATURE. NO MORE THAN FIFTEEN ACRES FROM A LAND BANK MAY BE UTILIZED BY ANY INDIVIDUAL COUNTY WITHOUT PRIOR APPROVAL FROM THE LEGISLATURE.

1 F. THE DEPARTMENT SHALL CONDUCT APPRAISALS, CONSISTENT WITH STANDARDS  
2 DEVELOPED BY THE DEPARTMENT AND PAID FOR BY THE PROJECT SPONSOR, TO  
3 DETERMINE THE FAIR MARKET VALUE OF THE STATE LAND WHICH IS PROPOSED TO  
4 BE USED.

5 G. NO LAND FROM A LAND BANK SHALL BE ALLOCATED TO AN ELIGIBLE PROJECT  
6 UNLESS THE STATE RECEIVES A PAYMENT FROM THE PROJECT PROPONENT EQUAL TO  
7 THE VALUE OF THE STATE LAND TO BE UTILIZED, OR, FOR PUBLIC UTILITY  
8 PROJECTS, IN ACCORDANCE WITH METHODS DETERMINED BY THE DEPARTMENT. ANY  
9 FUNDS RECEIVED SHALL BE DEPOSITED IN THE FOREST PRESERVE EXPANSION FUND,  
10 ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-E OF THE STATE FINANCE LAW,  
11 AND ONLY BE USED TO ACQUIRE LANDS AS AN ADDITION TO THE FOREST PRESERVE.  
12 FUNDS RECEIVED FOR THE USE OF A REGIONAL LAND BANK SHALL BE USED TO  
13 ACQUIRE LANDS WITHIN THE SAME REGION.

14 H. AFTER A HEARING AND OPPORTUNITY TO BE HEARD, IF THE COMMISSIONER  
15 DETERMINES THAT A PROJECT SPONSOR IS UTILIZING LAND FOR A PURPOSE OTHER  
16 THAN AS AUTHORIZED BY THE DEPARTMENT, THE COMMISSIONER MAY REQUIRE  
17 REMOVAL OF ANY IMPROVEMENTS TO THE LAND AND RESTORATION OF THE LAND TO A  
18 NATURAL, VEGETATIVE STATE.

19 6. THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR PUBLIC REVIEW AND  
20 COMMENT ON ALL APPLICATIONS FOR PROJECTS PURSUANT TO SUBDIVISIONS TWO,  
21 THREE, FOUR AND FIVE OF THIS SECTION.

22 7. STATE LANDS USED FOR PROJECTS AUTHORIZED BY PARAGRAPH B OF SUBDIVI-  
23 SION FIVE OF THIS SECTION SHALL BE CONVEYED, OR AN EASEMENT GRANTED FOR  
24 PUBLIC UTILITY PROJECTS, TO THE PROJECT SPONSOR WITH A DEED RESTRICTION  
25 SPECIFYING THAT THE LAND SHALL ONLY BE USED FOR THE PURPOSE AUTHORIZED  
26 BY THE DEPARTMENT AND SHALL NOT BE TRANSFERRED TO ANY ENTITY FOR A  
27 DIFFERENT PRIVATE OR COMMERCIAL PURPOSE. SUCH LANDS SHALL REVERT TO THE  
28 STATE WHEN THEY SHALL CEASE TO BE USED FOR THE PURPOSES AUTHORIZED BY  
29 THIS SECTION.

30 8. PRIOR TO ALLOWING ANY PROJECT SPONSOR TO USE LAND FROM A LAND BANK  
31 FOR AN ELIGIBLE PROJECT, AS AUTHORIZED BY SUBDIVISION FIVE OF THIS  
32 SECTION, THE STATE SHALL ACQUIRE NO LESS THAN SEVEN HUNDRED FIFTY ACRES,  
33 WHICH SHALL INCLUDE AT LEAST FIVE HUNDRED ACRES IN THE ADIRONDACK PARK  
34 AND AT LEAST TWO HUNDRED FIFTY ACRES IN THE CATSKILL PARK, WHICH SHALL  
35 BE ADDED TO THE FOREST PRESERVE AND SHALL BE CLASSIFIED AS WILDERNESS.

36 9. THE PROVISIONS OF SUBDIVISIONS ONE AND FIVE OF SECTION 9-0303 OF  
37 THIS TITLE SHALL NOT APPLY TO ACTIVITIES AUTHORIZED PURSUANT TO THIS  
38 SECTION.

39 10. NOTHING IN THIS SECTION SHALL AFFECT THE APPLICATION OF STATE  
40 ENVIRONMENTAL QUALITY REVIEW PURSUANT TO ARTICLE EIGHT OF THIS CHAPTER  
41 OR THE JURISDICTION OF THE ADIRONDACK PARK AGENCY IN ACCORDANCE WITH  
42 ARTICLE TWENTY-SEVEN OF THE EXECUTIVE LAW, PROVIDED THAT NO SUCH PROJECT  
43 SHALL BE SUBJECT TO THE ADIRONDACK PARK STATE LAND MASTER PLAN DEVELOPED  
44 PURSUANT TO SECTION EIGHT HUNDRED SIXTEEN OF THE EXECUTIVE LAW OR THE  
45 CATSKILL PARK STATE LAND MASTER PLAN; PROVIDED, HOWEVER, THAT APPLICABLE  
46 PROVISIONS OF A STATE LAND MASTER PLAN SHALL APPLY TO THE REAL PROPERTY  
47 INTERESTS RETAINED BY THE STATE IN ANY LAND SUBJECT TO AN EASEMENT FOR A  
48 UTILITY LINE PURSUANT TO THIS SECTION.

49 11. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGU-  
50 LATIONS AS MAY BE NECESSARY TO IMPLEMENT AND ADMINISTER THE PROVISIONS  
51 OF THIS SECTION.

52 12. THE DEPARTMENT SHALL MAINTAIN AN INVENTORY OF ALL FEE AND CONSENT  
53 TO OCCUPY PARCEL ACREAGES AND SURVEY MAPS SUBJECT TO THIS SECTION.

54 13. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE AND IF ANY  
55 PORTION THEREOF OR THE APPLICABILITY THEREOF TO ANY PERSON OR CIRCUM-

1 STANCES SHALL BE HELD INVALID, THE REMAINDER OF THIS TITLE AND THE  
2 APPLICATION THEREOF SHALL NOT BE AFFECTED THEREBY.

3 S 2. Section 97-e of the state finance law, as amended by chapter 637  
4 of the laws of 1960, is amended to read as follows:

5 S 97-e. Forest preserve expansion fund. 1. There is hereby established  
6 in the state treasury a special fund, to be known as the forest preserve  
7 expansion fund, which shall consist of and into which shall be paid all  
8 moneys derived from the sale of certain forest preserve lands specified  
9 in section twenty-four of the public lands law, MONEYS RECEIVED FOR A  
10 REGIONAL LAND BANK TRANSACTION PURSUANT TO SECTION 9-0309 OF THE ENVI-  
11 RONMENTAL CONSERVATION LAW and such other moneys as may be paid into  
12 said fund pursuant to law. The moneys in such fund shall be expended  
13 only for the acquisition of additional lands FOR THE PRACTICE OF FOREST  
14 OR WILDLIFE CONSERVATION IN FOREST PRESERVE COUNTIES PURSUANT TO SECTION  
15 9-0309 OF THE ENVIRONMENTAL CONSERVATION LAW for the forest preserve  
16 within either the Adirondack or Catskill park as now fixed by law. Upon  
17 appropriation by the legislature, the [conservation] department OF ENVI-  
18 RONMENTAL CONSERVATION may use such moneys or any portion thereof for  
19 the acquisition of such additional lands subject to the approval of  
20 title thereto by the attorney general. All payments from such fund shall  
21 be made by the department of taxation and finance after audit by and  
22 upon warrant of the comptroller, on vouchers approved by the [conserva-  
23 tion] commissioner OF ENVIRONMENTAL CONSERVATION.

24 2. The [conservation] commissioner OF ENVIRONMENTAL CONSERVATION is  
25 authorized to accept, in the name of the people of the state of New  
26 York, any gift or bequest of moneys to be paid into such forest preserve  
27 expansion fund and to be expended and disbursed as provided in subdivi-  
28 sion one of this section.

29 S 3. This act shall take effect on the same date and in the same  
30 manner as a "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing  
31 an amendment to article 14 of the constitution, in relation to allowing  
32 public utility lines and bicycle paths on certain state lands in the  
33 forest preserve and establishing a forest preserve land bank for public  
34 projects" takes effect, in accordance with section 1 of article 19 of  
35 the constitution.