

# STATE OF NEW YORK

2608--B

2017-2018 Regular Sessions

## IN SENATE

January 13, 2017

Introduced by Sens. LITTLE, AMEDORE, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

The People of the State of New York, represented in Senate and Assembly, 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 § 9-0309. Use of certain state lands in forest preserve counties for  
4 public utilities and health and safety land accounts for  
5 projects on state lands.

6 1. Definitions. For purposes of this section:

7 a. "Highway" means a town highway, as defined in paragraph five of  
8 section three of the highway law, in existence on January first, two  
9 thousand fifteen, which is listed on the local highway inventory main-  
10 tained by the department of transportation, and annually plowed and  
11 regularly maintained, or a state highway, as defined in subdivisions  
12 one, two and three of section three of the highway law, or a county  
13 road, as defined in subdivision four of section three of the highway  
14 law.

15 b. "Project sponsor" means:

16 (1) for purposes of projects within the width of a highway, a village,  
17 a town, a county, a public utility company, a public water supplier or,  
18 for purposes of a bicycle path, the department of transportation; and

19 (2) the purposes of projects within the health and safety land  
20 account, a public water supplier, a village, a town or a county.

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

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1 c. "Public utility company" shall have the same meaning as such term  
2 is defined in section two of the public service law, and for purposes of  
3 public utility line projects, as defined in subparagraph four of para-  
4 graph d of this subdivision, shall include a public water supplier, a  
5 town or a county.

6 d. "Public utility line" means:

7 (1) a line that conveys, transports or distributes steam or hot water,  
8 or electricity for light, heat or power;

9 (2) a communication line, including a telephone or telegraph line;

10 (3) broadband, including coaxial cable, optical cable, optical fiber  
11 and twisted pair; or

12 (4) a water line, sewer line and water system for domestic, commercial  
13 or public uses.

14 Public utility line shall include all appurtenant facilities, includ-  
15 ing poles and conduits, necessary to support such line.

16 e. "Public water supplier" means a county or town improvement district  
17 established to provide public water supply, village or any public bene-  
18 fit corporation or public authority established pursuant to state law or  
19 any agency of the state or the city of New York which is empowered to  
20 construct and operate a municipal water management facility, as defined  
21 in section twelve hundred eighty-one of the public authorities law.

22 f. "State lands" means lands owned by the state in forest preserve  
23 counties that are under the jurisdiction of the department.

24 g. "Water supply projects" means drinking water wells and necessary  
25 appurtenances thereto.

26 h. "Width of a highway" means highway as defined in subdivision four  
27 of section two of the highway law, and shall include the entire driving  
28 surface of the highway, plus the width of the cleared, regularly main-  
29 tained area adjacent to the driving surface.

30 2. A public utility line may be buried or co-located by a project  
31 sponsor within the width of a highway where the highway traverses state  
32 lands, subject to the approval by the department in the form of a  
33 consent to occupy and any required authorization from the department of  
34 transportation to ensure compliance with state and federal law, rules  
35 and regulations. Essential above grade infrastructure directly related  
36 to and necessary for such buried or co-located public utility lines may  
37 be located within the width of such highways.

38 a. Prior to department review and approval, a proposal to bury or  
39 co-locate a new utility line pursuant to this section must receive  
40 approval by resolution of the town board or boards of the town or towns  
41 in which the utility line is proposed.

42 b. If the proposed utility line will utilize a town or county highway,  
43 the applicant shall provide the department with a certification from the  
44 town or county respectively that the area where the utility line will be  
45 placed is beneath the driving surface or in the cleared, regularly main-  
46 tained area adjacent to the driving surface.

47 c. No compensation shall be required to be provided to the state for  
48 approval to bury or co-locate a utility line in the width of a highway,  
49 except as may be required by the highway law, the transportation corpo-  
50 rations law, or any other state or federal law, rule or regulation.

51 d. The utility line owner shall submit an application for a consent to  
52 occupy and survey map delineating the land to be used for the public  
53 utility purposes, prepared to standards of the department.

54 3. A bicycle path may be constructed and maintained by a project spon-  
55 sor within the width of a highway that traverses state lands, subject to  
56 approval by the department in the form of a consent to occupy and any

1 required authorization from the department of transportation to ensure  
2 compliance with state and federal law, rules and regulations. The  
3 project sponsor shall submit a survey map, prepared to standards of the  
4 department, of the lands where the bicycle path will be constructed.

5 4. a. There is hereby created a health and safety land account. The  
6 health and safety land account shall be two hundred fifty acres of state  
7 lands which shall be available in the counties of Clinton, Delaware,  
8 Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida,  
9 Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington.

10 b. Subject to review and approval by the department and any required  
11 authorization from the department of transportation to ensure compliance  
12 with state and federal law, rules and regulations, and subject to the  
13 approval of the legislature if the proposed project will utilize more  
14 than forty-three thousand five hundred square feet of land, a project  
15 sponsor may apply to use available acreage from the health and safety  
16 land account for the following:

17 (1) to relocate, reconstruct and maintain existing town and county  
18 highways for the purpose of addressing safety and eliminating the  
19 hazards of dangerous curves and grades and to address drainage problems  
20 on such highways provided that no single relocated portion of a highway  
21 may be longer than one-half mile in length on state lands and provided  
22 further that no single relocated portion of a highway may be longer than  
23 one mile in length;

24 (2) construction, reconstruction, relocation or improvement of a  
25 bridge, or bridge infrastructure to improve public safety, bridge safety  
26 or eliminate bridge hazards;

27 (3) to install stabilization devices on existing public utility poles  
28 located within proximity to the width of a highway; and

29 (4) water supply projects located within five hundred thirty feet of  
30 the edge of the width of the highway, if it is necessary to meet drink-  
31 ing water quality standards.

32 All such projects shall minimize the removal of trees or vegetation.

33 c. An application for a proposal shall include a survey map, prepared  
34 to the standards of the department, a narrative about the project, a  
35 justification, and estimates of needed acreage. The department shall  
36 hold a non-adjudicatory public hearing on the project, at which the  
37 public shall be given an opportunity to be heard. Notice of any such  
38 hearing and public comment shall be provided thirty calendar days in  
39 advance and shall be published in the state register, the environmental  
40 notice bulletin and in a newspaper having general circulation in the  
41 county where the forest preserve lands in question are located.

42 d. Acreage from the health and safety land account may be utilized for  
43 a project authorized by this subdivision only when the department has  
44 determined: there is no viable alternative on land not owned by the  
45 state; the project will minimize environmental impacts to the maximum  
46 extent practicable; and the proposal will not adversely impact lands  
47 with recognized critical environmental or recreational value, as deter-  
48 mined by the department based on a resource inventory and assessment.

49 Proposals for use of land from the health and safety land account  
50 shall be subject to public review and comment.

51 e. No individual project shall be permitted to utilize more than five  
52 acres from the health and safety land account. No more than ten acres  
53 from the health and safety land account may be utilized by any individ-  
54 ual town without prior approval from the legislature. No more than  
55 fifteen acres from the health and safety land account may be utilized by  
56 any individual county without prior approval from the legislature.

1 f. After a hearing and opportunity to be heard, if the commissioner  
2 determines that a project sponsor is utilizing land for a purpose other  
3 than as authorized by the department, the commissioner may require  
4 removal of any improvements to the land and restoration of the land to a  
5 natural, vegetative state and restored to the health and safety land  
6 account.

7 g. Notwithstanding the provisions of paragraph b or e of this subdivi-  
8 sion, no legislative approval shall be required for a project which  
9 utilizes more than forty-three thousand five hundred sixty square feet  
10 of land, when the governor declares, in writing, that the project is  
11 necessary to address or remedy an emergency to the public health and  
12 safety.

13 5. The department shall provide an opportunity for public review and  
14 comment on all applications for projects pursuant to subdivisions two,  
15 three and four of this section.

16 6. State lands used for projects authorized by paragraph b of subdivi-  
17 sion four of this section shall be conveyed, or an easement granted for  
18 public utility projects, to the project sponsor with a deed restriction  
19 specifying that the land shall only be used for the purpose authorized  
20 by the department and shall not be transferred to any entity for a  
21 different private or commercial purpose. Such lands shall revert to the  
22 state when they shall cease to be used for the purposes authorized by  
23 this section.

24 7. Prior to allowing any project sponsor to use land from the health  
25 and safety land account for an eligible project, as authorized by subdivi-  
26 vision four of this section, the state shall acquire no less than two  
27 hundred fifty acres, which shall be added to the forest preserve.

28 8. The provisions of subdivisions one and five of section 9-0303 of  
29 this title shall not apply to activities authorized pursuant to this  
30 section.

31 9. Nothing in this section shall affect the application of state envi-  
32 ronmental quality review pursuant to article eight of this chapter or  
33 the jurisdiction of the Adirondack park agency in accordance with arti-  
34 cle twenty-seven of the executive law, provided that no such project  
35 shall be subject to the Adirondack park state land master plan developed  
36 pursuant to section eight hundred sixteen of the executive law;  
37 provided, however, that applicable provisions of a state land master  
38 plan shall apply to the real property interests retained by the state in  
39 any land subject to an easement for a utility line pursuant to this  
40 section.

41 10. The department is authorized to promulgate such rules and regu-  
42 lations as may be necessary to implement and administer the provisions  
43 of this section.

44 11. The department shall maintain an inventory of all easements to  
45 occupy parcel acreages and survey maps subject to this section.

46 12. The provisions of this section shall be severable and if any  
47 portion thereof or the applicability thereof to any person or circum-  
48 stances shall be held invalid, the remainder of this title and the  
49 application thereof shall not be affected thereby.

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

52 § 97-e. Forest preserve expansion fund. 1. There is hereby established  
53 in the state treasury a special fund, to be known as the forest preserve  
54 expansion fund, which shall consist of and into which shall be paid all  
55 moneys derived from the sale of certain forest preserve lands specified  
56 in section twenty-four of the public lands law, moneys received for a

1 health and safety land account transaction pursuant to section 9-0309 of  
2 the environmental conservation law and such other moneys as may be paid  
3 into said fund pursuant to law. The moneys in such fund shall be  
4 expended only for the acquisition of additional lands for the practice  
5 of forest or wildlife conservation in forest preserve counties pursuant  
6 to section 9-0309 of the environmental conservation law for the forest  
7 preserve within either the Adirondack or Catskill park as now fixed by  
8 law. Upon appropriation by the legislature, the [~~conservation~~] depart-  
9 ment of environmental conservation may use such moneys or any portion  
10 thereof for the acquisition of such additional lands subject to the  
11 approval of title thereto by the attorney general. All payments from  
12 such fund shall be made by the department of taxation and finance after  
13 audit by and upon warrant of the comptroller, on vouchers approved by  
14 the [~~conservation~~] commissioner of environmental conservation.

15 2. The [~~conservation~~] commissioner of environmental conservation is  
16 authorized to accept, in the name of the people of the state of New  
17 York, any gift or bequest of moneys to be paid into such forest preserve  
18 expansion fund and to be expended and disbursed as provided in subdivi-  
19 sion one of this section.

20 § 3. This act shall take effect on the same date and in the same  
21 manner as a "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing  
22 an amendment to article 14 of the constitution, in relation to allowing  
23 public utility lines and bicycle paths on certain state lands in the  
24 forest preserve and establishing a forest preserve health and safety  
25 land account" takes effect, in accordance with section 1 of article 19  
26 of the constitution.