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:

Section 1. The environmental conservation law is amended by adding a new section 9-0309 to read as follows:

§ 9-0309. Use of certain state lands in forest preserve counties for public utilities and health and safety land accounts for projects on state lands.

1. Definitions. For purposes of this section:

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

b. "Project sponsor" means:

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

(2) the purposes of projects within the health and safety land 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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c. "Public utility company" shall have the same meaning as such term is defined in section two of the public service law, and for purposes of public utility line projects, as defined in subparagraph four of paragraph d of this subdivision, shall include a public water supplier, a town or a county.

d. "Public utility line" means:

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

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

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

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

Public utility line shall include all appurtenant facilities, including poles and conduits, necessary to support such line.

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

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

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

h. "Width of a highway" means highway as defined in subdivision four of section two of the highway law, and shall include the entire driving surface of the highway, plus the width of the cleared, regularly maintained area adjacent to the driving surface.

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

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

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

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

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

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

required authorization from the department of transportation to ensure compliance with state and federal law, rules and regulations. The project sponsor 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 a health and safety land account. The health and safety land account shall be two hundred fifty acres of state lands which shall be available in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington.

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, and subject to the approval of the legislature if the proposed project will utilize more than forty-three thousand five hundred square feet of land, a project sponsor may apply to use available acreage from the health and safety land account for the following:

(1) to relocate, reconstruct and maintain existing town and county highways for the purpose of addressing safety and 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 and provided further that no single relocated portion of a highway may be longer than one mile in length;

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

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

(4) water supply projects located within five hundred thirty feet of the edge of the width of the highway, if it is necessary to meet drinking water quality standards.

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

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 the health and safety land account may be utilized for a project authorized by this subdivision only when the department has determined: there is no viable 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 the health and safety land account shall be subject to public review and comment.

e. No individual project shall be permitted to utilize more than five acres from the health and safety land account. No more than ten acres from the health and safety land account may be utilized by any individual town without prior approval from the legislature. No more than fifteen acres from the health and safety land account may be utilized by any individual county without prior approval from the legislature.

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

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

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

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

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

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

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

10. The department is authorized to promulgate such rules and regulations as may be necessary to implement and administer the provisions of this section.

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

12. The provisions of this section shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

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

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

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

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

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