STATE OF NEW YORK

8300--A

2017-2018 Regular Sessions

IN ASSEMBLY

June 6, 2017

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Ways and Means -- 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 forest preserve health and safety land account and public utility improvements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 9 of the environmental conservation law is amended by adding a new title 21 to read as follows:

TITLE 21

FOREST PRESERVE HEALTH AND SAFETY LAND ACCOUNT AND PUBLIC UTILITY IMPROVEMENTS

Section 9-2101. Health and safety land account creation and use.
9-2103. Highway right of way public utility improvements.
9-2105. Department reporting.

§ 9-2101. Health and safety land account creation and use.

1. Definitions. For purposes of this section:

a. "eligible project" means a public health or safety-related project necessary where no viable alternative exists, limited to the following:

(i) address bridge hazards to improve public safety on county highways and town highways;

(ii) elimination of the hazards of dangerous curves and grades on county and town highways to improve public safety;

(iii) relocation, maintenance, and reconstruction of county highways and town highways, including associated culverts, for the purpose of addressing public safety provided that no relocation of any single relocated portion shall exceed one mile in length;

(iv) water wells and necessary appurtenances when such wells are necessary to meet drinking water quality standards and are located with-

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

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in five hundred thirty feet of state highways, county highways and town highways; and

(v) stabilization devices for an existing utility pole adjacent to, or no more than the minimum distance from the width of highway necessary to comply with standard safety practices.

Eligible projects shall not include the use of chemicals/herbicides for clearing state land; the removal of trees and vegetation shall be minimized and the area shall be restored to pre-project conditions to the maximum extent practicable.

b. "county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

c. "forest preserve expansion fund" shall mean the fund established pursuant to section ninety-seven-e of the state finance law.

d. "project sponsor" means a town, village, or county located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington.

e. "no viable alternative" means that no other option exists for the eligible project to address ongoing public health or safety concerns other than through the use of state lands.

f. "state highway" means a state highway as defined in subdivisions one, two and three of section three of the highway law.

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

h. "town highway" means a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

i. "width of the highway" shall have the same meaning as paragraph k of subdivision one of section 9-2103 of this title.

2. Following approval by the legislature of two hundred fifty acres of land to be added to the forest preserve, a health and safety land account of not more than two hundred fifty acres is created for use by project sponsors for eligible projects necessary to protect health and safety where no viable alternative is available. The account will be administered by the department.

3. A project sponsor with an eligible project may apply to the health and safety land account to receive acreage for an eligible project. Such application shall include:

a. a resolution from the governing body of the project sponsor that includes:

(i) attestation that the project is necessary to address public health or safety and no viable alternatives exist;

(ii) attestation that such lands will only be used for eligible purposes and that any real property acquired shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the eligible purposes for which it was approved without the express authority of an act of the legislature.

b. a detailed summary of the proposed eligible project, including the whole action and all related activities, a detailed summary of the alternatives the project sponsor explored prior to arriving at the conclusion there were no viable alternatives;

c. specific metes and bounds, including total proposed acreage;

d. a narrative about the project, including a justification;

e. a metes and bounds description and accurate survey of any lands proposed for inclusion in the forest preserve. Such lands must be of equal environmental value and fair market value and reasonable equivalent usefulness and location to the state lands being discontinued or in the event that the project sponsor provides money in lieu of land, such money shall be at least equivalent to the fair market value of the state land proposed to be conveyed;

f. any necessary permits and authorizations; and,

g. an accurate survey.

4. Immediately upon determining that an application is complete, the department shall cause a notice of application, which shall also include the time period for public comments, to be published in the next available state register and environmental notice bulletin as well as in a newspaper having general circulation in the area in which the eligible project is proposed to be located. Newspaper publications shall be provided by the project sponsor.

5. The department shall hold a public hearing on each eligible project at which the public shall be given an opportunity to be heard.

6. The department, following consultation with the department of transportation to determine that any required authorization has been provided, shall only deem a project sponsor eligible to receive acreage from the health and safety land account following a determination that:

a. the project meets the eligible project criteria, is necessary to protect public health or safety and the eligible project has no viable alternative on land not owned by the state;

b. the project minimizes adverse environmental impact to the maximum extent practicable;

c. the project will not adversely impact lands with recognized critical or recreational value, as determined by the department based on a resource inventory and assessment;

d. the lands to be conveyed by the project sponsor for inclusion in the forest preserve, or the monies to be paid into the forest preserve expansion fund, are at least equivalent to the fair market value of the state land proposed to be conveyed.

7. Once an application has been approved the commissioner shall cause to be prepared an accurate survey map showing the boundaries of all state land proposed to be conveyed and shall notify the legislature.

8. a. Prior to the actual transfer of title or issuance of letters patent for an eligible project that has been approved by the department, the legislature shall approve each eligible project and the dedication of lands of equal environmental value and fair market value and reasonable equivalent usefulness and location to those state lands to be conveyed for inclusion in the forest preserve. Once approved by the legislature, title to the land shall be approved and the deed to the people of the state of New York of any lands dedicated shall be approved by the attorney general as to form and manner of execution and recordability prior to its delivery.

b. Prior to the actual transfer of title or issuance of letters patent for an eligible project for which the total project cost is below the public work contract threshold pursuant to section one hundred three of the general municipal law and is less than one quarter linear mile total, which shall run and be measured parallel to the county highway or town highway, and, which has been approved by the department, title to land shall be approved and the deed to the people of the state of New York of any lands dedicated shall be approved by the attorney general as to form and manner of execution and recordability prior to its delivery.

9. Real property acquired, developed, improved, restored or rehabilitated by or through a project sponsor pursuant to this section shall not be leased, exchanged, donated or otherwise disposed of or used for other than the eligible project for which it was approved without the express authority of an act of the legislature. When the project sponsor determines such eligible project is no longer needed, the lands shall revert to the state forest preserve. The department shall prescribe the terms and conditions for the removal of any infrastructure.

§ 9-2103. Highway right of way public utility improvements.

1. Definitions. For purposes of this section:

a."county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

b. "eligible project" shall mean burial or co-location of a public utility line or construction and maintenance of bicycle paths by a project sponsor within the width of a highway of a town highway, county highway or state highway that traverses state forest preserve land.

c. "project sponsor" shall mean a village, town, a county, located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington or, for:

(i) bicycle paths, the department of transportation,

(ii) for water lines, a public water supplier; or

(iii) for electric, telephone or broadband lines, a public utility company.

d. "public utility company" shall have the same meaning as such term is defined in section two of the public service law; provided, however, that for broadband projects a person subject to article eleven of the public service law shall be included.

e. "public utility line" shall mean only electric, telephone, broadband, water or sewer lines. Public utility line shall not include the construction of any new intrastate natural gas or oil pipelines that have not received all necessary state and local permits and authorizations as of June first, two thousand sixteen.

f. "public water supplier" shall mean a county or town water improvement district, village, New York city, public benefit corporation or public authority established pursuant to state law and empowered to construct and operate a municipal water management facility, as defined in section twelve hundred eighty-one of the public authorities law.

g. "state highway" shall mean a state highway as defined in subdivisions one, two and three of section three of the highway law.

h. "state lands" shall mean lands owned by the state in forest preserve counties that are under the jurisdiction of the department.

i. "town highway" shall mean a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

j. "water supply projects" shall mean drinking water wells.

k. "width of the highway" shall mean three rods or the deeded, recorded municipal or state right of way or easement in existence as of January first, two thousand fifteen.

2. Pursuant to approval by the department and the department of transportation and following a public hearing on each eligible project at which the public shall be given an opportunity to be heard, a public utility line may be co-located within or buried beneath the width of the highway of any state highway, county highway, or town highway.

3. A project sponsor for an eligible project within the width of the highway shall submit an application for a permit to the department that at minimum shall include:

a. a resolution from the governing body of the project sponsor, or in the case of a public utility seeking to utilize the width of highway of a town highway, the governing body of the town, or the width of highway of a county, the county governing board, that includes:

(i) approval of the project;

(ii) attestation that such width of highway lands will only be used for eligible purposes;

(iii) attestation that the project will minimize the removal of trees and vegetation and restore the area to pre-project condition to the maximum extent practicable.

b. specific metes and bounds, including total proposed acreage of the width of highway land sought;

c. a narrative about the project, including a justification;

d. any necessary permits and authorizations; and,

e. an accurate survey.

4. Immediately upon determining that an application is complete, the department shall cause a notice of application, which shall also include the time period for public comments, to be published in the next available state register and environmental notice bulletin as well as in a newspaper having general circulation in the area in which the eligible project is proposed to be located. Newspaper publications shall be provided by the project sponsor.

5. The department shall hold a public hearing on each eligible project at which the public shall be given an opportunity to be heard.

6. The department, following consultation with the department of transportation to determine that any required authorization has been provided, shall only approve an application for an eligible project permit following a determination that:

a. the eligible project meets the eligible project criteria;

b. the eligible project minimizes adverse environmental impact to the maximum extent practicable; and

c. the eligible project will not adversely impact lands with recognized critical or recreational value, as determined by the department based on a resource inventory and assessment.

7. 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.

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

§ 9-2105. Department reporting.

1. The department shall issue an annual report to the legislature detailing the use of the health and safety land account and the highway right of way public utility improvement permits including: the number of applications received; the number of eligible projects applications approved and denied; the project description, narrative and acreage of eligible projects; the cumulative total of eligible projects listed by project sponsor; total deposits by each project sponsor into the forest preserve fund; annual disbursements from the forest preserve fund and the amount of land acquired with such disbursements; total number of

public utility improvement permits issued; and the cumulative total and project type of permits issued listed by project sponsor.

2. The information contained in such report shall also be made available on the department's website and updated no less than annually.

§ 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 from a project sponsor of an eligible project for a health and safety land account transaction pursuant to section 9-2101 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 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. The enactment of this legislation shall be deemed to meet the legislative approval requirement pursuant to subdivision 8 of section 9-2101 of the environmental conservation law, for an eligible project as defined in section 1 of section 9-2101 of the environmental conservation law, that consists of the relocation of a county-owned highway structure taken out of service in 2009, which spans the Schroon River in the town of Chester in the county of Warren. Such authorization is conditioned on the receipt by such project of all required permits and approvals and compliance with all the other criteria identified in section 9-2101 of the environmental conservation law.

§ 4. 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.