

STATE OF NEW YORK

2608--A

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sen. LITTLE -- 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

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. "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, which is listed on the local highway inventory main-
12 tained by the department of transportation, and annually plowed and
13 regularly maintained, or a state highway, as defined in subdivisions
14 one, two and three of section three of the highway law, or a county
15 road, as defined in subdivision four of section three of the highway
16 law.

17 c. "Project sponsor" means:

18 (1) for purposes of projects within the width of a highway, a city, a
19 village, a town, a county, a public utility company, a public water
20 supplier or, for purposes of a bicycle path, the department of transpor-
21 tation; and

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

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1 (2) the purposes of projects within the health and safety land
2 account, a city, a village, a town or a county.

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

8 e. "Public utility line" means:

9 (1) a line that conveys, transports or distributes steam or electric-
10 ity for light, heat or power;

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

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

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

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

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

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

26 h. "Stormwater management structure" means devices which are engi-
27 neered and constructed to provide storage and treatment of stormwater
28 runoff, including ponds, wetlands, open channels, infiltration practices
29 and filtering practices.

30 i. "Water supply projects" means drinking water wells and necessary
31 appurtenances thereto.

32 j. "Width of a highway" means the entire driving surface of the high-
33 way, plus the width of the cleared, regularly maintained area adjacent
34 to the driving surface, or thirty feet from the center line of a two
35 lane highway or thirty feet from the middle of the passing lane nearest
36 the shoulder of a four lane highway, whichever is less, except for on
37 the state highway system where determined otherwise by the department of
38 transportation.

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

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

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

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

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

8 3. A bicycle path may be constructed and maintained by a project spon-
9 sor within the width of a highway that traverses state lands, subject to
10 approval by the department in the form of a consent to occupy and any
11 required authorization from the department of transportation to ensure
12 compliance with state and federal law, rules and regulations. The
13 project proponent shall submit a survey map, prepared to standards of
14 the department, of the lands where the bicycle path will be constructed.

15 4. a. There is hereby created a health and safety land account. The
16 health and safety land account shall be two hundred fifty acres of state
17 lands which shall be available in the counties of Clinton, Essex, Frank-
18 lin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint
19 Lawrence, Warren and Washington.

20 b. Subject to review and approval by the department and any required
21 authorization from the department of transportation to ensure compliance
22 with state and federal law, rules and regulations, a project sponsor may
23 apply to use available acreage from the health and safety land account
24 for the following:

25 (1) to relocate, reconstruct and maintain existing town and county
26 highways for the purpose of eliminating the hazards of dangerous curves
27 and grades and to address drainage problems on such highways provided
28 that no single relocated portion of a highway may be longer than one-
29 half mile in length on state lands without prior approval by the legis-
30 lature and provided further that no single relocated portion of a high-
31 way may be longer than one mile in length;

32 (2) construction, reconstruction, relocation or improvement of a
33 bridge, or bridge infrastructure to improve bridge safety and eliminate
34 bridge hazards;

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

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

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

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

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

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

3 e. No individual project shall be permitted to utilize more than five
4 acres from the health and safety land account. No more than ten acres
5 from the health and safety land account may be utilized by any individ-
6 ual town without prior approval from the legislature. No more than
7 fifteen acres from the health and safety land account may be utilized by
8 any individual county without prior approval from the legislature.

9 f. The department shall conduct appraisals, consistent with standards
10 developed by the department and paid for by the project sponsor, to
11 determine the fair market value of the state land which is proposed to
12 be used.

13 g. No land from the health and safety land account shall be allocated
14 to an eligible project unless the state receives a payment from the
15 project proponent greater than the value of the state land to be
16 utilized, or, for public utility projects, in accordance with methods
17 determined by the department. Any funds received shall be deposited in
18 the forest preserve expansion fund, established pursuant to section
19 ninety-seven-e of the state finance law, and only be used to acquire
20 lands as an addition to the forest preserve. Funds received for the use
21 of the health and safety land account shall be used to acquire lands
22 within the same region.

23 h. After a hearing and opportunity to be heard, if the commissioner
24 determines that a project sponsor is utilizing land for a purpose other
25 than as authorized by the department, the commissioner may require
26 removal of any improvements to the land and restoration of the land to a
27 natural, vegetative state.

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

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

39 7. Prior to allowing any project sponsor to use land from the health
40 and safety land account for an eligible project, as authorized by subdivi-
41 sion four of this section, the state shall acquire no less than two
42 hundred fifty acres, which shall be added to the forest preserve and
43 shall be classified as wilderness.

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

47 9. Nothing in this section shall affect the application of state envi-
48 ronmental quality review pursuant to article eight of this chapter or
49 the jurisdiction of the Adirondack park agency in accordance with arti-
50 cle twenty-seven of the executive law, provided that no such project
51 shall be subject to the Adirondack park state land master plan developed
52 pursuant to section eight hundred sixteen of the executive law;
53 provided, however, that applicable provisions of a state land master
54 plan shall apply to the real property interests retained by the state in
55 any land subject to an easement for a utility line pursuant to this
56 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 fee and consent 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.