

Court of Appeals
of the
State of New York

HUNTERS FOR DEER, INC. and MICHAEL LEWIS,

Plaintiffs-Respondents,

— against —

TOWN OF SMITHTOWN,

Defendant-Appellant.

NOTICE OF MOTION FOR LEAVE TO APPEAL

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COURT OF APPEALS
STATE OF NEW YORK

-----X
HUNTERS FOR DEER, INC. and MICHAEL LEWIS,

Plaintiffs-Respondents,

-against-

TOWN OF SMITHTOWN,

Defendant-Appellant.

Appellate Div. 2d Dept.
Case No: 2018-06959

Suffolk Co. Index No.
623373/2017

Notice of Motion For
Leave To Appeal

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PLEASE TAKE NOTICE that upon the annexed Statement in Support of the Motion for Leave to Appeal dated October 14, 2020, the exhibits annexed thereto, the Decision and Order of the Appellate Division, Second Department dated August 19, 2020, and upon all prior pleadings and proceedings heretofore had herein, the Defendant-Appellant, Town of Smithtown, will move at a motion term of this Court at the Courthouse located at 20 Eagle Street, Albany, New York, on the 26th day of October, 2020, at 9:30 a.m. of that day or as soon thereafter as counsel can be heard, for an Order pursuant to Article 6, §3(b)(6) of the New York State Constitution and CPLR § 5602(a)(1)(i) granting the Defendant-Appellant leave to appeal to the Court of Appeals from the decision and order of the Appellate Division,

Second Department, dated August 19, 2020, together with a stay pending the determination of the appeal, and for such other and further relief as this Court deems just and proper..

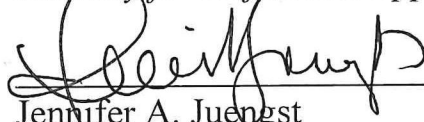
The grounds of the motion are that this matter raises a novel issue of statewide importance involving the construction of two state laws, public safety and the right to discharge bows,

Dated: Smithtown, New York
October 14, 2020

Respectfully submitted,

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COURT OF APPEALS
STATE OF NEW YORK

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HUNTERS FOR DEER, INC. and MICHAEL LEWIS,

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TOWN OF SMITHTOWN,

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Statement in Support
of Motion for Leave to
Appeal

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STATEMENT OF PROCEDURAL HISTORY
AND TIMELINESS OF MOTION

The Defendant-Appellant, TOWN OF SMITHTOWN, (hereinafter, “Town” or “Defendant”) moves for an Order pursuant to Article 6, §3(b)(6) of the New York State Constitution and CPLR § 5602(a)(1)(i) granting the Town leave to appeal from the Decision and Order of the Appellate Division, Second Department, dated August 19, 2020 (“August 19, 2020 Order”), to the Court of Appeals, upon the ground that this matter raises novel issues of statewide importance, the issuance of a stay allowing for the enforcement of Smithtown Town Code §160-5 pending a determination on the appeal in the event leave is granted, and for such other and further relief as this Court may deem just and proper. A copy of the

August 19, 2020 Order, which was served by the Town on September 15, 2020, upon counsel for the Plaintiffs-Appellants, HUNTERS FOR DEER, INC. and MICHAEL LEWIS (hereinafter “Plaintiffs”) on September 15, 2020, is annexed hereto as Exhibit A. A copy of the affidavit of service of the August 19, 2020 Order is annexed to this motion as Exhibit B. The August 19, 2020 Order finally determined this matter by granting summary judgment to the Plaintiffs and is not appealable as of right.

A copy of the Supreme Court Order dated May 21, 2018 (“May 21, 2018 Order”), which was appealed by Plaintiffs to the Appellate Division, Second Department, is annexed hereto as Exhibit C. Copies of the Briefs and Record on Appeal are submitted with the instant motion, and references to the Record on Appeal are designated as “(R. #)”.

The instant motion is being served on or before October 15, 2020 and therefore, the Town timely moves in this Honorable Court for leave to appeal the August 19, 2020 Order to the Court of Appeals. A copy of the affidavit of service of this motion and its supporting papers upon Plaintiffs’ counsel is annexed hereto.

The underlying action sought to declare invalid a Smithtown Town Code provision establishing a minimum 500 foot discharge setback for firearms including a bow and arrow within the jurisdiction of the Town of Smithtown outside of village boundaries. Plaintiffs commenced the action by the filing on December 6,

2017, a summons and verified complaint (R. 9 - 11). In the complaint the Plaintiffs assert that the Town's setback limit is invalid because the state's Environmental Conservation Law (hereinafter "ECL") barred municipalities from legislating more restrictive discharge limits than the state. In this case the Town's longer setback of 500 feet is more restrictive than the State's setbacks of 150 feet for long bows and 250 feet for crossbows.

Issue was joined by the Town on December 18, 2017, with the filing and service of a verified answer [R. 44-48] denying the material allegations in the complaint and asserting affirmative defenses as follows: first, the complaint failed to set forth sufficient facts to constitute a sufficient cause of action; second, the claims are barred in whole or part by the statute of limitations; third, the complaint fails to set forth facts to constitute a deprivation of any constitutional right; fourth, plaintiffs lack standing to sue; fifth, plaintiff failed to timely and/or properly exhaust all necessary administrative, statutory and/or jurisdictional pre-requisites to commence the action; sixth, lack of damages or the damages are inconsequential and *de minimis*; seventh, lack of jurisdiction due to defective summons; and eighth, the Town acted reasonably and believed its actions were lawful and within statutory and constitutional authority and its actions and omissions were pursuant to law.

On or about March 23, 2018, the Plaintiff moved for summary judgment seeking an order declaring Town Code §160-5 invalid on the ground that it is preempted by ECL §11-0931(4)(a)(2) which controls discharge limitations of firearms and bows used for hunting. [R. 47-51]. On or about April 9, 2018, the Town cross-moved for summary judgment [R. 52-58] seeking an order denying the Plaintiffs' motion dismissing the action and on the grounds that the Town Code does not regulate hunting and that the establishment of discharge distances for purposes of public safety is a permissible exercise of the town's police power granted pursuant to Article 9 of New York's Constitution and New York State Town Law §130(27) the enabling legislation that grants certain local governments, including Smithtown, the authority to enact local laws promoting public safety in areas where the discharge of firearms is being conducted in populated areas and therefore, hazardous. The Plaintiffs opposed the Town's cross-motion. [R.59 – 66]. The Town submitted a reply affirmation in opposition to the Plaintiffs' motion and in further support of its cross-motion for summary judgment. [R.67 – 69].

By its May 21, 2018, Order (the trial court order appealed from), the Supreme Court, Suffolk County (Santorelli, J.), denied the Plaintiffs' motion and granted the Town's cross-motion dismissing the complaint. A copy of Justice Santorelli's decision and order is annexed hereto as Exhibit C.

Following service of Justice Santorelli's May 21, 2018 Order with notice of entry on May 22, 2018, the Plaintiffs filed a notice of appeal dated May 31, 2018. On October 2, 2018, the Plaintiffs filed their appellate brief and the Record on Appeal with the Clerk of the Second Department of the Supreme Court of the State of New York. The Town filed a brief in opposition and the appeal was fully submitted to the Second Department on May 22, 2020. Copies of the briefs and Record on Appeal filed in the Second Department are submitted herewith.

By its August 19, 2020 Order (Exhibit A), the Appellate Division, Second Department reversed the May 21, 2018 Order, denied the Town's cross-motion for summary judgment dismissing the complaint and granted the Plaintiffs' motion for summary judgment declaring Town Code Chapter 160 invalid as applied to the discharge setback of a bow and arrow, and remitted the matter to the trial court for the entry of a judgment declaring chapter 160 of the Town Code invalid as applied to the discharge setback of a bow and arrow.

Pursuant to New York State Constitution Article 6, §3(b)(6) and CPLR §5602((a)(1), the Town now moves by notice of motion to the Court of Appeals for leave to appeal the August 19, 2020 Order of the Appellate Division, Second Department on the ground that this matter raises novel issues of statewide importance involving preemption of local public safety laws and for a stay pending a decision

of this Court on the appeal in the event leave is granted and for such other and further relief as this Court deems just and proper.

THE COURT'S JURISDICTION OVER THE MOTION AND THE PROPOSED APPEAL

Jurisdiction over this motion and the proposed appeal is conferred upon this Court by Article 6, §3(b)(6) of the New York Constitution and CPLR §5602(a)(1)(i). This is an appeal from the decision and order of the Appellate Division, Second Department, by a vote of 4-0 that finally determined the action, which originated in the Supreme Court, and which is not appealable as of right.

DISCLOSURE STATEMENT PURSUANT TO 22 NYCRR §500.1(f)

The Town of Smithtown is a municipal corporation formed and operated pursuant to the laws of the State of New York. As such, it does not have any parent corporations, subsidiaries or affiliates.

STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

This proposed appeal presents the following questions of law which are of statewide importance, having broad impact upon how municipalities will conduct their governmental duty to provide for the safety of their inhabitants in close proximity to persons using bows capable of killing or injuring people. References to

pages in the Record on Appeal are to locations in the Record where the issue was raised]:

1. Does the Environmental Conservation Law bar local governments from regulating the use of bows when their use presents a danger to the general public or nearby residents? [R. 10, 13, 54, 57, 64, Point II of Plaintiffs' Appellate Brief,]
2. Is the danger posed to the safety and welfare of residents from the use of firearms, including bows, in densely populated areas a matter that affects the state as a whole? [R. 54, 55, 57, 67, Point IV of the Town's Appellate Brief in Opposition]
3. Is there a preemptive conflict between a town's public safety firearm ordinance (adopted pursuant to state Town Law §130[27]) establishing a minimum 500 foot discharge setback for bows and the Environmental Conservation Law §11-0931 which sets shorter discharge setbacks for bows (150 feet for long bow; 250 feet for cross bow) when used to hunt wildlife? [Point III of the Town's Appellate Brief in Opposition; August 19, 2020 Order of the Appellate Division at p. 2 -3; Justice Santorelli decision of May 21, 2018, at pp. 4-5]
4. In adopting Town Law §130(27) did the Legislature evidence an intent to limit the authority of local governments to determine what implements

constitute firearms for purposes of regulating their safe use in close proximity to the general public within their jurisdictions? [Point III of the Town's Appellate Brief in Opposition; August 19, 2020 Order of the Appellate Division at pp. 2 - 3]

5. Did the Appellate Division misapply the rule of *in pari materia* when it construed two separate state acts that touch upon the same subject matter but have different purposes? [August 19, 2020 Order of the Appellate Division at p. 3].

STATEMENT OF RELEVANT FACTS

In 1967 the Town of Smithtown adopted Chapter 160 entitled, "Ordinance Regulating the Discharge of Firearms in the Town of Smithtown" to its town code. Since 1967, the Town's definition of Firearm has included "a bow and arrow." The only amendment to the Town's definition of firearm occurred in 1990 when the term "bludgeon" was removed.

The purpose of Chapter 160 is found at §160-3 which states, "[t]he purpose of this chapter is to prohibit any person from discharging a firearm in those areas of the Town of Smithtown in which such activity may be hazardous to the general public or nearby residents." In addition to defining prohibited areas as all areas in the town "except those areas as stipulated under §160-5, entitled "Exceptions,"

§160-4 also deemed the discharge of firearms to be hazardous to the general public.

Sec. 160-5 - Exceptions was amended in 1990 to read as follows:

Landowners may discharge firearms on their own property, and also firearms may be discharged upon a landowner's property by others with the written consent of the landowner, provided that such discharge of firearms does not violate the provisions of the Environmental Conservation Law.

[Town Code §160-5 (amended 1-9-1990)].

In 2012, the Town amended §160-5 again. It is this version that the Appellate Division invalidated in the August 19, 2020 Order subject of this motion.

Town Code §160-5 reads,

Firearms may be discharged upon one's own property and the property of another with the written consent of the landowner, provided that any such discharge of firearms does not occur within five hundred feet from a dwelling, school or occupied structure, or a park, beach, playground or any other place of outdoor recreational or non-recreational activities; and further provided that any such discharge of firearms does not violate the provisions of the New York State Environmental Conservation Law.

[Town Code §160-5 (Amended 2-23-2012)].

In 2014, the State Legislature amended ECL §11-0931(4)(a)(2)[L. 2014 C.55, Part EE] as part of a State Budget Bill. The amendment to the discharge setback for long bows consisted of a reduction from 500 feet to 150 feet and the

amendment to the discharge setback for crossbows consisted of a reduction from 500 feet to 250 feet.

The legislative history of the passage of the setback reductions makes clear that the safety of the general public or nearby residents was not a concern of those supporting the amendments. Annexed hereto as Exhibit D are excerpts from the supplemental bill jacket for the Laws of 2014, Chapter 55 pertaining to the amendments. Nothing in the Governor's 2014 State of the State report, Executive Budget Report, Preliminary Report on the State Fiscal Year 2014-15 Enacted Budget, NYS Executive Budget Memorandum In Support, NYS Senate Majority Coalition Finance Committee/Counsel Staff Analysis, NYS Assembly Ways and Means Committee Yellow Book Review and Analysis, NYS Finance Democratic Conference Staff Analysis, correspondence from Audobon New York, the Nature Conservancy, New York State Conservation Council, Inc., State of New York Conservation Fund Advisory Board, or the testimony of the DEC Commissioner Joseph Martens, demonstrates any consideration was given by the supporters of the amendments for the safety of people living, working or playing nearby.

However, at the Joint Legislative Hearing on January 29, 2014, Senator Liz Krueger raised her concerns with Commissioner Martens about allowing crossbows to be treated "the same way as longbows, as opposed to guns." Exhibit D, page 91 of the hearing transcript. She asked the Commissioner, "[a]re you not

concerned about allowing these to be used within 150 feet of where people and children live? *Id.* The Commissioner's response was "[a]ll I can tell you, Senator, is that I have been reassured by my staff, many of which are very knowledgeable about crossbows and longbows, that 150 feet is a safe distance, that the arrows lose their force long before the 150 yards." He then corrects his testimony to reflect that he meant 150 feet. *Id.* pp. 91-92. The Senator advises the Commissioner of her understanding that some bows "are enormously powerful and can go far farther than 50 yards." *Id.* p. 92. Senator Krueger ends her questioning of the Commissioner with a request that he get her some research about crossbows to "assure us that we wouldn't be putting children at risk." *Id.* The Commissioner agrees to her request and states, "[o]bviously I would share your concerns."

Although the amendments to ECL §11-0931(4)(a)(2) reflect an adjustment to 250 foot setback for crossbows, the legislative history nonetheless, reflects little if any concern for the safety of members of the general public. Moreover, as evidenced by the 2014 amendment to ECL §11-0103(25) "Hunting related incident" remained defined as "the injury to or death of a persona caused by the discharge of a firearm, crossbow or longbow . . ." No other amendments prior to or after 2014 evidence any intent for the State to manage the safety of the general public or residents near within striking distance of those using any type of bows.

The Town of Smithtown does not regulate the hunting of wildlife in any part of its code. Nonetheless, after the 2014 amendment to the ECL, the Plaintiffs viewed the Town's firearm ordinance as interfering with the state's authority over hunting because 1) it includes the term 'bow and arrow' in its definition of firearm; and 2) it still requires a 500 foot setback for the discharge of firearms.

In 2017, the Plaintiffs challenged the Town's 2012 amendment on the grounds that the Department of Environmental Conservation (hereinafter "DEC") holds exclusive regulatory authority over hunting and the discharge of bows in New York. [R-10]. Plaintiffs alleged in the complaint that the Town's 500 foot setback for all firearms is inconsistent with the state law regulating bows and as such the town's ordinance defeats the state law's purpose of "providing a detailed and comprehensive statewide regulatory framework for the management of wild-life populations, including by means of hunting." [R-11].

The Plaintiffs' motion for summary judgment was denied by the trial court on the grounds that 1) the state did not preempt the entire field of regulating the discharge of firearm as towns are expressly authorized to regulate firearms pursuant to Town Law §130(27); 2) there is no conflict preemption between the state laws and the town ordinance because the state laws do not allow anything that the town ordinance prohibits; and 3) the Plaintiffs failed to rebut the presumption that the town ordinance is a valid exercise of its rule making authority.

The Plaintiffs appealed to the Appellate Division, Second Department which reversed the trial court's decision. The Second Department held that notwithstanding the authority provided to Smithtown under New York Town Law §130(27) to regulate the discharge of firearms, the Town's 2012 amendment restricting the discharge setback on all firearms, including a bow and arrow, to 500 feet from a dwelling, school or occupied structure, or a park, beach, playground or any other place of outdoor recreational or non-recreational activities was invalid as applied to a bow.

Despite the fact the term "firearm" is not defined anywhere in ECL Article 11 which controls hunting activities throughout the State, or in Town Law §130(27) which authorizes towns to regulate the discharge of firearms, the Second Department held that the Town did not have the authority to include a bow in its definition of firearm. The Second Department ruled that when the two different state statutes are analyzed together, it can be inferred that the Legislature intended the term "firearm" to exclude a bow, and therefore, the Town could not rely on Town Law 130(27), to adopt a stricter setback standard for bows than the state's setbacks in ECL §11-0931(4)(a)(2).

Despite the fact that ECL 11-0931(4)(a)(2) and Town Law 130(27) have very different purposes, the Second Department reasoned that it was proper to apply the construction principle of *in pari materia* to both state statutes because they

each use the “same terminology to regulate the same subject matter.” The court apparently placed significant weight on the fact that Town Law §130(27) “mention[s] . . . the 500 foot rule which refers to the 500 foot discharge setback in ECL 11-0931(4). All of these factors together lead the Second Department to conclude that the Town’s regulation of bows in §160-5 of Town Code Chapter 160 is inconsistent with state law.

As demonstrated below, the Second Department erroneously applied the principle of *in pari materia* to two State statutes that address vastly different concerns even though they each touch upon the use of firearms and bows. The State’s wildlife management laws and hunting regulations do not afford the Department of Environmental Conservation complete autonomy over matters of safety of the general public on a statewide basis. Moreover, neither of the State laws involved in this matter expressly or impliedly bar the Town from including bows in its definition of firearms. Accordingly, the State’s ECL does not preempt the authority granted to Smithtown by the Legislature under Town Law §130(27) to adopt the more restrictive setback of 500 feet for the discharge of bows within the town’s jurisdiction. The Second Department’s decision and order must be reversed and the trial court’s decision and order dismissing the complaint must be reinstated and a judgment entered in the Town’s favor dismissing the complaint.

ARGUMENT

POINT I.

LEAVE TO APPEAL SHOULD BE GRANTED SO THE COURT OF APPEALS MAY CONSIDER WHETHER THE APPELLATE DIVISION ERRED IN FINDING THAT THE ENVIRONMENTAL CONSERVATION LAW PREEMPTED A TOWN ORDINANCE'S MORE RESTRICTIVE SETBACK FOR THE DISCHARGE OF BOWS.

The fact that as part of New York's obligation to manage all wildlife, the Legislature adopted a comprehensive scheme that regulates the use of firearms, long bows and crossbows for hunting (Article 11 (Fish and Wildlife) of the state's Environmental Conservation Law), does not automatically preempt a town from regulating the use of firearms and bows within each municipality's unique jurisdiction for purposes of public safety.

Some towns and villages in New York are more densely populated than others. There are more people living and working in Smithtown than most towns in Cayuga County. As a result it is understandable that if a bow is discharged in Smithtown near a home, business, school, etc., there is greater risk of injury, damage or death to a person in Smithtown than a less populated town. Local governments are in a better position than the State to police activities in their communities to meet present and future needs of their inhabitants. The matter of policing the discharge a firearm or bow is a matter within the scope of the property, affairs or

government of a local government and as such is a matter left to local control pursuant to N.Y. Constitution, article IX, §3(a). See also Municipal Home Rule Law §10.

The State has never demonstrated that its interest in managing the deer population is so substantial as to override local governments' constitutional authority to provide for the safety and welfare of the inhabitants of each municipality in accordance with local conditions (availability of open space, density of buildings and structures, population).

Unless there is a valid express preemption of local law contained in a State law, a court will not invalidate a local law unless it can be sufficiently established that the state law impliedly preempts the local law. This court looks to the purpose or declared policy of a State statute. It also looks to see if the State enactment regulates the field or subject matter so completely that its intention is to prevent varying local legislation of the matter. Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia, 51 N.Y.2d 679, 435 N.Y.S.2d 966 (1980).

The Town contends that the Second Department ignored the purposes underlying ECL Article 11, Town Law 130(27) and Smithtown's Chapter 160 and erroneously inferred that the Legislature intended to preclude all municipalities from regulating discharge setbacks for bows. In particular, the appellate panel inferred that the term 'firearm' as used in the ECL does not include a bow. It held that

Smithtown had no authority to include a bow in its definition of firearm and therefore, Smithtown's ordinance at §160-5 of the town code purporting to regulate the discharge setback of a bow to 500 feet was inconsistent with state law allowing a setbacks of 150 feet f and 250 feet for a long bow and crossbow respectively. See ECL §11-0931(4)(a)(2).

The declared purpose of ECL Article 11 is “the efficient management of the fish and wildlife resources of the state.” ECL §11-0303(1). This section further provides that management shall be deemed to include “both the maintenance and improvement of such resources as natural resources” and that to achieve this purpose, the department shall enter into reciprocal and cooperative arrangements with political subdivisions as well as other public agencies and private entities. *Id.*

Town Law §130(7) is a special law authorizing specified municipalities to adopt local rules, regulations or ordinances prohibiting the discharge of firearms “in areas in which such activity may be hazardous to the general public or nearby residents ... which ordinances, rules and regulations may be more, but not less, restrictive than any other provision of law.” It is clear from this language that the purpose of Town Law §130(27) is to provide for the safety of people of Smithtown who are in proximity to those using firearms.

Chapter 160 of Smithtown's Town Code, entitled “Ordinance Regulating the Discharge of Firearms in the Town of Smithtown,” states that its purpose is “to

prohibit any person from discharging a firearm in those areas of the Town of Smithtown in which such activity may be hazardous to the general public or nearby residents.” Chapter 160, §160-4 provides that because “[t]he discharge of firearms is deemed hazardous to the general public... [this activity is] prohibited in all areas of the Town of Smithtown except those areas stipulated under §160-5, Exceptions.”

Section 160-5 of the Town’s Code requires all firearms to be discharged from a distance of at least 500 feet of a dwelling, school or occupied structure, or a park, beach, playground, place of outdoor recreation or non-recreational activities. The Town defines a firearm to include a bow. Town Code §160-2 (“Firearm [i]ncludes . . . a bow and arrow”).

Clearly the town’s firearm code is consistent with the provisions of the state’s enabling legislation at Town Law §130(27) as both statutes allow for the discharge of firearms at a minimum distance of 500 feet from an enumerated list of structures and places. Both Town Law §130(27) and Town Code Chapter 160 expressly address a significant public safety issue – the danger presented by the proximity between people who are involved in the activity of discharging firearms and bows and those who are not.

The fact that ECL §11-0931(4)(a)(2) also refers to the discharge of firearms, long bows and crossbows at distances of 500, 150 and 250 feet respectively from a

dwelling house, farm building or farm structure actually occupied or used, school building, school playground, public structure or occupied factory or church, does not evince the State's intent exclude local government's role and bring the broad scope of local public safety in populated areas such as Smithtown within its stated purpose of efficiently managing wildlife.

Hence despite the fact the Town imposes a more restrictive setback for bows than ECL §11-0931(4)(a)(2), the Town's ordinance §160-5 is not in direct conflict with the state law because they address different purposes. The State's shorter setbacks for bows is not related to public safety. It is intended to provide for more accuracy in the taking of wildlife in furtherance of the State's objective of managing wildlife. The Town ordinance on the other hand is solely intended to provide safer discharge conditions for the protection of human life when people are using bows in proximity to the general public or nearby residents in a manner that it presents a hazard to human life and property.

Despite its obligation to enter into cooperative agreements with local governments as stated in ECL 11-0303(1), the Plaintiffs failed to demonstrate that the state has made any attempt to fulfil its statutory obligation of reaching an agreement with the town on the use of bows in Smithtown.

The Appellate Division failed to consider the general spirit and purpose of the statutes involved and to interpret the statutes in a manner to further their purposes. Cohen v. Freedman, 185 Misc. 848, 58 N.Y.S.2d 154 (City Ct. N.Y. Co., Spec. Term 1945).

POINT II.

THERE IS NEITHER AN EXPRESS NOR AN IMPLIED INTENT IN THE ECL TO PREEMPT THE TOWN FROM LEGISLATING A MORE RESTRICTIVE DISCHARGE SETBACK FOR BOWS.

Had the State intended to preclude local governments from adopting safety ordinances establishing discharge setbacks for bows, it could have spelled that out in ECL Article 11. The State has done so in other Articles of the ECL. For instance, Article 17 dealing with water pollution control contains a provision at §17-1017 entitled, "Preemption of Local Law". At subdivision 1 of that section the state provided that "[e]xcept as provided in subdivision two of this section, any local law or ordinance which is inconsistent with any provision of this title or any rule or regulation promulgated hereunder shall be preempted."

ECL Article 27 - the State's solid waste disposal statute - states at §27-0711 that the state expressly disclaims any State purpose to supersede or preclude the

enactment of local ordinances so long as they are consistent with at least the minimum requirements of the regulations promulgated by the statute.

The ECL does not evince an implied intent to occupy the field of wildlife management in a manner to exclude local governments from protecting their own inhabitants from the dangers of the discharge of bows in densely populated areas.

Title 9 of ECL Article 11 unquestionably demonstrates the State's intent to control all aspects of hunting wildlife throughout the State. The declared purpose of Article 11 governing the state's exercise of fish and wildlife management authority is found at ECL 11-0303. Subsection 1 states that the purpose is to vest in the department the "efficient management of the fish and wildlife resources of the state." All wild animals are considered resources of the state. According to ECL §11-0303(1), management includes maintenance and improvement of these resources as natural resources. Management shall include entering into cooperative agreements with political subdivisions of the State and with owners or lessees of privately owned lands. *Id.*

Subsection 2 of §11-0303 expands on the purpose of managing wildlife by directing the department to use its powers in a manner that promotes the maintenance of desirable species in ecological balance and leads to the observance of sound management practices giving regard to ecological factors; compatibility with other land uses; recreational purposes of wildlife; requirements of public

safety and the need for adequate protection of private premises and of the persons and property of occupants against abuse of privileges of access to such premises for hunting, fishing or trapping.

On the last two objectives - public safety and protection from abuse of hunting privileges - the State has failed to promulgate implementing regulations aimed at protecting the general public or residents in close proximity to hunters discharging firearms including bows.

Nowhere in Title 9 of ECL Article 11 is there any language indicating that the State's management policies for deer throughout New York excludes the concerns or involvement of local government in providing for the safety of people within its borders when it comes to the use of firearms including bows. To the contrary, cooperation with local governments is expressly intended to be part of the management strategy of the State. See ECL §11-0303 sub.(1) (authorizing the department to enter into reciprocal and cooperative agreements with political subdivisions on matters related to wildlife management). Upon information and belief, the State has not reached out to Smithtown to discuss entering an agreement concerning the use of bows in the town.

The only other mention of public safety is contained in ECL §11-0931(2) which contains an exception for persons with disabilities from the prohibition of carrying a loaded firearm in a vehicle subject to restrictions "deem[ed] necessary

in the interest of public safety.” Aside from these two references to public safety, the overwhelming majority of Article 11’s provisions deal with specific requirements and practices involved in hunting, taking and trapping. While safe hunting practices for the well-being of hunters are evident throughout Article 11, there is no evidence in the Record or in the text of the statute to support a finding of implied intent to preclude the town from imposing safety regulations for the discharge of bows where the activity presents a hazardous condition to the general public or nearby residents within Smithtown.

POINT III.

THE SECOND DEPARTMENT’S HOLDING THAT THE TOWN
COULD NOT DEFINE ‘FIREARM’ TO INCLUDE A BOW WAS
BASED UPON A FAULTY INFERENCE BORN OF THE
MISAPPLICATION OF THE DOCTRINE OF *IN PARI MATERIA*.

The Second Department erroneously concluded that Town code §160-5 is impliedly preempted based upon the faulty inference that the Legislature intended the definition of ‘firearm’ to not include a hunting bow. The inference was arrived at through a misapplication of the rule of construction known as *in pari materia*. When resorted to correctly, the rule allows for consideration of different parts of a statute or statutes enacted at different times with reference to the same subject

matter. McKinney's Statutes §221. The Second Department construed ECL §11-0931(4)(a)(2) and Town Law §130(27) together.

However, ECL §11-0931(4)(a)(2) and Town Law §130(27) do not address the same subject matter. These two State laws are not consistent with each other because they were adopted for different purposes. The ECL provision addresses how, when and who can use a variety of hunting implements including firearms and bows and the types of wildlife that can and cannot be taken depending on the implement. The Town Law provision addresses the discharge setback for all firearms and bows when the activity presents a hazard to the general population or residents that are near to the discharge. The Town Law and the Town Code adopted under the state's authority does not regulate hunting. The two statutes are not consistent in their purposes. Hence, it was error to construe them together.

The fact that the "five hundred foot rule" mentioned in Town Law §130(27) relates to the 500 foot discharge setback in ECL §11-0931(4) is not dispositive of whether the two statutes can be considered consistent for the purpose of being construed together. The reference in Town Law 130(27) to the 500 foot rule is for notice purposes only. There is no substantive meaning that can be attributed to the reference given its plain meaning as written. The particular sentence reads, "[t]hirty days prior to the adoption of any ordinance changing the five hundred foot

rule, a notice must be sent to the regional supervisor of fish and game of the environmental conservation department notifying him of such intention.” Nothing in this sentence relates to the Town’s authority to regulate the discharge setback for a bow.

Moreover, the Town did not adopt any changes to the discharge setbacks. It was the State that amended the ECL in 2014 to reduce the hunting setbacks for bows at a time when the ECL, the Town Law and the Town Code were consistent in that they all required a setback of 500 feet for all firearms and bows. It was the State that subsequently decided to reduce the setbacks for long bows and cross-bows.

In addition the Second Department erroneously expanded and applied the State’s regulatory definition of ‘firearm’ to both Town Law 130(27) and Smithtown’s firearm ordinance at Chapter 160 of the town code. Courts are barred from expanding the operation of statutes and their regulations beyond the bounds of legislative intent. (McKinney’s Statutes §73 [current through L. 2019, ch. 758 and L. 2020, chs. 1-242]). The state’s regulatory definition found at 6 NYCRR 180.3 expressly states that it only applies to the state’s Fish and Wildlife Law (ECL, Article 11) and the regulations of Title 6. Accordingly, the regulatory definition is not applicable to Town Law and the Town was within its right to consider a bow to be a

firearm for purposes of public safety. The fact that the regulatory definition of ‘firearm’ does not mention a bow is irrelevant. In fact, Plaintiff concedes that the regulatory definitions are dicta. See Plaintiff’s Attorney’s Affirmation in Opposition to Defendant’s Cross Motion to Dismiss” dated April 18, 2018 [R#60].

The Second Department’s erroneous application of an inapplicable regulatory definition to two State statutes, and the Town’s firearm ordinance by implication, was improper and cannot be allowed to stand as a bar to the Town’s discharge regulation for bows. Accordingly, it was error to invalidate the town’s regulation of bows for purposes of public safety on the basis of a definition that is inapplicable to Town Law §130(27).

The Second Department’s statutory interpretation of firearm as excluding a bow also violates a basic canon of construction which is to read a statute as a whole. When the hunting and licensing portions of ECL Article 11 are read together, they demonstrate that the state considers bows as hunting implements with the same or similar capability of killing or wounding wildlife. If this were not the case, the State would have no reason to issue licenses and permits for bow hunting or to mention them at all in Article 11.

Article 11’s multiple references to long bows, crossbows, and other types of bows are peppered throughout both Titles 7 and 9 which deal strictly with licensing

and hunting qualifications. Reading these titles together evinces a clear intent that the State considers long bows and crossbows to be implements for hunting similar to pistols, shotguns, muzzle-loading firearms. It expressly provides hunting privileges for the use of bows on licenses issued by the Department of Environmental Conservation.

Hunting licenses are defined in ECL §11-0701. ECL §11-0701 (1)(a) bars a person of 12 or 13 years old from hunting with a crossbow. A holder of hunting license may take fish with a longbow. ECL§11-0701(2)(a)(3). A bow hunting privilege is provided for on a hunting license under certain conditions. ECL§11-0701(3). A person 18 years or older can hunt wild deer with a longbow. ECL§11-0701(3)(2). A hunting license can include a privilege to hunt with a muzzle-loading firearm or a crossbow. ECL §11-0701(9).

Prohibitions against taking wildlife are contained in ECL §§11-0901 and 11-0931 dictate that wild deer and bear can only be taken by “gun, crossbow or by long bow” and sometimes only by shotgun or long bow and sometimes only by long bow. Other provisions of ECL 11-0901 dictate the types of implements that can or cannot be used to take different types of fish and wildlife. The use of firearms, limited gauge shotguns, long bows and crossbows are expressly permitted under this section pursuant to varying conditions.

Despite its title, “Prohibitions on the use and possession of firearms,” ECL§11-0931 expressly addresses the permitted use and carrying of crossbows, longbows and limited types of firearms (pistols and revolvers). The ECL provision scrutinized by the Second Department - §11-0931(4) – also expressly refers to the discharge of crossbows and longbows along with firearms when certain conditions are met, i.e., no discharge over a public highway [subd. (4)(a)(1); and different discharge setbacks for firearm, long bow and cross bow [subd. (4)(a)(2)].

Following the interpretation rule of *ejusdem generis* (identifying a class of objects using a general word does not limit that class to only the same identical objects, but can include others of the same kind or class), the fact that the Legislature repeatedly groups together firearms, longbows, crossbows, shotguns, muzzleloading firearm in a variety of combinations throughout the statute supports a finding that the State used the term ‘firearm’ in a generic manner followed by more specific implements such as bows, all used for the purpose of killing or wounding wildlife.

This is not a case where the law only describes one thing – in this case, one particular hunting instrument - so that the maxim *expressio uniu est exclusion alterius* applies leading to the irrefutable inference that what is omitted was intended to be excluded. The State’s repeated clustering of hunting instruments together

throughout the hunting Titles of Article 11 demonstrate that none of them were intended to be excluded from the operation of Article 11.

To hold that the Legislature did not intend to treat bows as implements capable of taking wildlife in the same spirit as firearms is illogical. Under these circumstances, to disallow a municipality to adopt public safety ordinances for the discharge of bows and firearms alike is not supported by a proper interpretation of these statutes.

In applying a faulty interpretation of the term ‘firearm’, the Appellate Division’s decision effectively abrogated Town Law §130(27) where there was no legal basis to do so. Town Law §130(27) is a special law and as such it cannot be repealed by implication unless the two statutes are so inconsistent that they cannot stand together. McKinney’s Statutes §396 (current through L. 2019, ch. 758 and L. 2020, chs. 1-199). Since both state laws have different purposes, they are not inconsistent and Town Law §130(27) provided Smithtown with authority to require a setback for all bows used in the town to 500 feet.

The Town’s purpose and motive in 2012 for setting the discharge distance for its firearm definition section (§160-2) was a lawful exercise of its constitutional authority and statutory home rule powers aimed at keeping people safe when they are in proximity to others discharging bows.

POINT IV.

SMITHTOWN'S SETBACK OF 500 FEET AS APPLIED TO THE DISCHARGE OF BOWS IS A VALID EXERCISE OF HOME RULE POWER UNDER N.Y. CONST. ART. 9, Sec. 2.

The Home Rule principle adopted at N.Y. Const., art. 9, Sec. 2 [c][i] provides Smithtown with the necessary constitutional authority to adopt and amend legislation relating to its property, affairs and government so long as the local enactment is not inconsistent with New York's Constitution or any general law. Local governments are also authorized to adopt and amend legislation not inconsistent with the state constitution or general laws even if it does not relate to the property, affairs or government if it has to do with the "government, protection, order, conduct, safety, health and well-being of persons or property" in the local jurisdiction and the State Legislature has not restricted the adoption of such a local law. N.Y. Const., art. 9, [c][ii]; Jancyn Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91, 524 N.Y.S.2d 8 (1987).

Section 3(a) of Art. 9 of the state constitution explicitly establishes that the Legislature may still adopt enactments that deal with, *inter alia*, matters outside the scope of the property, affairs or government of a local government. It is the Town's contention that the restriction on discharging a bow in the Town of Smithtown is a matter sufficiently related to the property, affairs and government of the

town and as such is not subject to the overriding authority of the Legislature to affect or nullify the Town's enactments.

The Department of Environmental Conservation, the agency charged with wildlife management under ECL Article 11, does not have a substantial interest in policing the daily safety of the residents of the Town of Smithtown; whereas the public's safety is the primary interest of local police or public safety officers on a day to day basis. Given the number of residents, schools, houses, buildings, etc., in the occupied areas of the town, it is reasonable to conclude that local police or public safety officers know these areas of the town and therefore, are in a better position to enforce local safety laws as opposed to DEC Enforcement Officers whose knowledge of the towns' neighborhoods, business districts, commercial areas, outside of public lands and Wildlife Management Areas, is far more limited.

The contention asserted in the Plaintiffs' lawsuit is that discharging bows is a safe activity. If this were true, there would be no reason for the State to adopt numerous restrictions on the use of bows throughout Titles 7 and 9 of the hunting provisions in ECL Article 11. Moreover, despite the conclusory, unsupported comments by Plaintiffs otherwise, the fact that the Legislature adopted shorter setbacks for long bows and crossbows is not incontrovertible proof that the discharge of bows is a safe activity around the general public or nearby residents. There is nothing in the record demonstrating that the DEC has a greater interest than local

public safety officers when it comes to regulating the use of bows that present a danger to the general public and nearby residents.

Town Law 130(27) continues to bear a reasonable relationship to the Town's concern for public safety, while ECL 11-0931(4)(a)(2) bears a reasonable relationship to the state's concern for effective wildlife management. It is reasonable for the Court to consider that because a discharged bow is capable of killing wildlife, a discharged bow is also capable of killing people. As such, it cannot be that the Legislature intended to make the discharge of bows in proximity to people living, working, going to school or playing in a park, safer by allowing the discharge to occur at a much closer distance to the general public or nearby residents.

Therefore, it appears that the discharge reductions adopted by the State relate solely to increasing the efficacy of using bows as one of the state's wildlife management tools. Which brings us to the ultimate issue - did the Legislature, in adopting shorter setbacks under state law for bows in 2014, intend to elevate the importance of wildlife management over the importance of public safety?

The invalidation of the town's firearm ordinance, insofar as it applies to bows, appears to support this untenable conclusion and must be reversed. Courts are obligated to avoid construing statutes in a manner that tends to sacrifice or prejudice the public interests. McKinney's Statutes §143(current through L. 2019, ch. 758 and L. 2020, chs. 1-199). Therefore, it must be presumed that the Legislature

did not intend to increase the hazards to the general public by adopting reduced setbacks and such an intention will not be imputed. Statewide Roofing, Inc. v. Eastern Suffolk Bd. Of Co-op Educ. Services, 173 A.D.2d 514, 661 N.Y.S.2d 922(Sup. Ct. Suff. Co. 1997).

Similarly, courts should interpret a statute in a manner to give force to the whole act in a manner that does not work an injustice. Lincoln Park Lanes v. State Liquor Authority, 36 A.D.2d 188, 319 N.Y.S.2d 741 (1971). Plaintiffs are of the position that the increased nuisance from an abundance of deer in populated areas justifies the increased risk to people faced with the reality that bows may be discharged closer than ever permitted before. When ECL Article 11 is looked at as a whole, it clearly defines strategies for achieving the management of wildlife by killing them. It is not however, a public safety law.

While there is little disagreement that the deer populations in suburbs such as Smithtown have increased, this increase alone does not justify making discharge setbacks a priority over public safety. Unfortunately, that is the result of the August 19, 2020 Order. The Second Department ignored these rules of construction and interpretation and as a result its ruling is seriously prejudicial to the public and works an injustice as the preservation of human life is given a lower priority than the killing of wildlife.

Accordingly, it is necessary to interpret ECL 11-0931(4)(a)(2), in a manner that is not limited to the literal words therein, but that allows for the discharge of bows from 150 feet (long bow) and 250 feet (crossbow) *when doing so does not present a danger or hazard to the general public or nearby residents that is greater than that existing at 500 feet.* In this way, the State laws can be harmonized and as such, the town's 500 foot setback applicable to bows remains consistent with State law and therefore, valid as a local enactment.

POINT V.

THE ISSUANCE OF A STAY BARRING THE ENFORCEMENT OF ECL 11-0931(4)(a)(2) AND PERMITTING THE TOWN TO ENFORCE § 160-5 OF THE TOWN CODE IS PROPER.

The Town has set forth a compelling case that the August 19, 2020 Order appealed from is erroneous on the law and as such the Town's arguments for reversal are meritorious and likely to succeed. This case involves the safety of the general public in the Town of Smithtown which provides public safety protection on a daily basis. It would work an injustice upon the Town to allow the State to enforce its discharge setbacks for bows instead of the Town's longer setbacks. There is no prejudice to the State by enforcing the Town's more restrictive setbacks in light of the fact that the State previously used the same 500 foot setback

for bows throughout New York and the Town is not regulating hunting. It is respectfully requested that the Court stay all further proceedings until a decision on the motion for leave as well as a decision on the Town's appeal is made should leave be granted.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Town of Smithtown respectfully requests that this Court grant leave to appeal from the August 19, 2020 Order of the Second Department, so that the Court of Appeals may consider these issues of statewide importance as they deal with public safety in every municipality; issue a stay of enforcement of the August 19, 2020 Order and allow the Town to enforce Town Code § 160-5 during the pendency of the stay, together with such other and further relief as the Court deems just and proper.

Dated: Smithtown, New York
October 14, 2020

Respectfully submitted,

MATTHEW V. JAKUBOWSKI
Town Attorney for the Town of
Smithtown

By: 

Jennifer A. Juengst
Assistant Town Attorney

99 West Main Street
Smithtown, New York 11786
Tel. 631 360 7570

NOTICE OF MOTION FOR LEAVE TO APPEAL

EXHIBIT A

Appellate Division: Second Judicial Department

D63388

T/htr

AD3d

Submitted - May 22, 2020

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
LINDA CHRISTOPHER, JJ.

2018-06959

DECISION & ORDER

Hunters for Deer, Inc., et al., appellants,
v Town of Smithtown, respondent.

(Index No. 623373/17)

Killoran Law, P.C., Westhampton Beach, NY (Christian D. Killoran of counsel), for appellants.

Matthew V. Jakubowski, Town Attorney, Smithtown, NY (Jacqueline A. Fink of counsel), for respondent.

In an action, inter alia, for declaratory relief, the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Joseph A. Santorelli, J.), dated May 21, 2018. The order, insofar as appealed from, denied that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought a declaration that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow, and granted that branch of the defendant's cross motion which was for summary judgment dismissing that part of the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, that branch of the plaintiffs' motion which was for summary judgment on so much of the complaint as sought a declaration that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow is granted, that branch of the defendant's cross motion which was for summary judgment dismissing that part of the complaint is denied, and the matter is remitted to the Supreme Court, Suffolk County, for the entry of a judgment, inter alia, declaring that chapter 160 of the Code of the Town of Smithtown is invalid as applied to the discharge setback of a bow and arrow.

The plaintiff Michael Lewis is a New York State licensed hunter and president of the plaintiff Hunters for Deer, Inc., a not-for-profit corporation. The plaintiffs commenced this action against the defendant, Town of Smithtown, to stay enforcement of chapter 160 (hereinafter the

ordinance) of the Code of the Town of Smithtown (hereinafter the Town Code), and for a declaratory judgment invalidating the ordinance as preempted by State law.

The ordinance prohibits the discharge of firearms in “all areas” in the Town (Town Code § 160-4), subject to certain specified exceptions (*see* Town Code § 160-5). These exceptions permit the discharge of firearms “upon one’s own property and upon the property of another with the written consent of the landowner,” but prohibit such discharge “within 500 feet from a dwelling, school or occupied structure, or a park, beach, playground or any other place of outdoor recreational or nonrecreational activities” (Town Code § 160-5[a]). The ordinance further defines a “firearm” as a “weapon which acts by the force of gunpowder or from which a shot is discharged by the force of an explosion, *as well as* an air rifle, an air gun, a BB gun, a slingshot and *a bow and arrow*” (Town Code § 160-2 [emphasis added]).

After issue was joined, the plaintiffs moved for summary judgment on the complaint, and the Town cross-moved for summary judgment dismissing the complaint. In an order dated May 21, 2018, the Supreme Court denied the plaintiffs’ motion and granted the Town’s cross motion. The plaintiffs now appeal from so much of the order as denied that branch of their motion which was for summary judgment on so much of the complaint as sought a declaration that the ordinance was invalid as applied to the discharge setback of a bow and arrow, and granted that branch of the defendant’s cross motion which was for summary judgment dismissing that part of the complaint.

The constitution of New York State “confers broad police power upon local government relating to the welfare of its citizens” (*New York State Club Assn. v City of New York*, 69 NY2d 211, 217, *aff’d* 487 US 1; *see* NY Const, art IX, § 2[c]). However, “local governments may not exercise their police power by adopting a law inconsistent with . . . any general law of the State” (*Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 96). “[C]onflict preemption occurs when a local law prohibits what a state law explicitly allows, or when a state law prohibits what a local law explicitly allows” (*Matter of Chwick v Mulvey*, 81 AD3d 161, 168).

Here, we agree with the plaintiffs that, to the extent that the ordinance purports to regulate the discharge setback of a bow and arrow within the Town, it is invalid as preempted by State law. The New York Environmental Conservation Law (hereinafter ECL) provides specific discharge setback requirements for firearms, cross bows, and longbows. ECL 11-0931(4)(a)(2) provides, with certain exceptions, that “[n]o person shall . . . discharge a firearm within five hundred feet, *a long bow within one hundred fifty feet*, or a crossbow within two hundred fifty feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, public structure, or occupied factory or church” (emphasis added). The term “firearm” is defined, for the purposes of the ECL, as “any rifle, pistol, shotgun or muzzleloading firearm which by force of gunpowder, or an airgun . . . , that expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish, wildlife or other animals” (6 NYCRR 180.3[a]). This definition of “firearm” plainly does not encompass a bow and arrow.

Town Code § 160-2 defines a “firearm” to include a bow and arrow, and the subject ordinance thereby purports to prohibit, with certain exceptions, the discharge of a bow and arrow in any area of the Town “within 500 feet from a dwelling, school or occupied structure, or a park, beach, playground or any other place of outdoor recreational or nonrecreational activities” (Town Code § 160-5). Thus, the ordinance seeks to prohibit the discharge of a bow and arrow in circumstances where, under State law, discharge of a bow and arrow is allowed (*see* ECL 11-

0931[4][a][2]; *see generally* *Matter of Lansdown Entertainment Corp. v New York City Dept. of Consumer Affairs*, 74 NY2d 761, 764-765).

The plaintiffs therefore met their burden of demonstrating, *prima facie*, that the challenged ordinance, insofar as applied to the discharge setback of a bow and arrow, was preempted by the conflicting provisions in ECL 11-0931(4)(a)(2) and 6 NYCRR 180.3(a).

In opposition, the Town failed to raise a triable issue of fact sufficient to defeat summary judgment. The Town incorrectly contends that its ability to regulate the discharge setback of a bow and arrow is expressly authorized by Town Law § 130(27). That statute vests certain municipalities, including the Town, with the power to pass ordinances “prohibiting the discharge of firearms in areas in which such activity may be hazardous to the general public or nearby residents,” provided that “[t]hirty days prior to the adoption of any ordinance changing the five hundred foot rule, a notice must be sent to the regional supervisor of fish and game of the environmental conservation department, notifying him of such intention” (Town Law § 130[27]). However, that statute is premised upon a definition of the term “firearm” that does not include a bow and arrow.

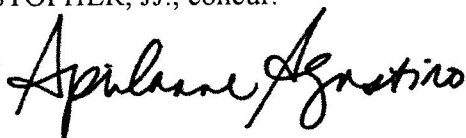
The Town unpersuasively contends that it is free to define for itself the meaning of “firearm,” as used in Town Law § 130(27), so as to include “bow and arrow.” Although Town Law § 130(27) does not expressly define “firearm,” it can be readily inferred that the term is used in the same manner as in ECL 11-0931(4), which explicitly distinguishes between firearms and bows in setting forth discharge setback requirements (*see* ECL 11-0931[4][a][2]; *see also* 6 NYCRR 180.3[a] [defining “firearm” for purposes of ECL article 11]). Indeed, the mention of the “five hundred foot rule” in Town Law § 130(27) refers to the five-hundred-foot discharge setback required under ECL 11-0931(4). Construed in *pari materia*, these two statutory provisions employ the same terminology to regulate the same subject matter, and demonstrate that the Town may not regulate the discharge setback of a bow and arrow in a manner inconsistent with State law.

We therefore remit the matter to the Supreme Court, Suffolk County, for the entry of a judgment, *inter alia*, declaring that the ordinance is invalid as applied to the discharge setback of a bow and arrow (*see Sunrise Check Cashing & Payroll Servs., Inc. v Town of Hempstead*, 91 AD3d 126, 140, *affd* 20 NY3d 481).

The parties’ remaining contentions are without merit or need not be reached in light of our determination.

MASTRO, J.P., LEVENTHAL, ROMAN and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

NOTICE OF MOTION FOR LEAVE TO APPEAL

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

-----X

Hunters for Deer, Inc. and Michael Lewis,

App. Div. No. 2018-06959

Plaintiffs-Appellants,

Index No. 623373/17

-against-

DECISION AND ORDER
WITH NOTICE OF ENTRY

Town of Smithtown,

Defendant-Respondent.

-----X

STATE OF NEW YORK)
 :SS
COUNTY OF SUFFOLK)

FAITH L. McGIBNEY, being duly sworn deposes and says:

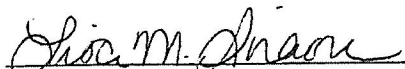
1. I am not a party to this action, am over 18 years of age and reside in East Islip, New York.

2. On the 15th day of September, 2020, I served pursuant to Uniform Rules for the Trial Courts, upon the attorneys of record listed below in this electronically filed action, a true and correct copy of the within Decision and Order with Notice of Entry. By operation of the Court's electronic filing system, parties may access this filing posted on the electronic system for this case.

Killoran Law, P.C.
Christian Killoran, Esq.
Attorney for Plaintiffs
132-13 Main Street
Westhampton Beach, NY 11978


FAITH L. McGIBNEY

Sworn to before me this
15th day of September, 2020.


Notary Public

LISA M SINACORE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SI6404684
Qualified in Suffolk County
My Commission Expires 02-24-2024

NOTICE OF MOTION FOR LEAVE TO APPEAL

EXHIBIT C

SHORT FORM ORDER

INDEX No. 623373/2017
CAL No. _____

ORIGINAL

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 3/23/18
SUBMIT DATE 4/26/18
Mot. Seq. # 01 - MD
X-Mot. Seq. # 02 - MG

HUNTERS FOR DEER, INC., and MICHAEL LEWIS,

Plaintiffs,

-against-

TOWN OF SMITHTOWN,

Defendant.

KILLORAN LAW, PC

Attorneys for Plaintiffs

132013 MAIN ST

WESTHAMPTON BEACH, NY 11978

MATTHEW V. JAKUBOWSKI, ESQ.

SMITHTOWN TOWN ATTORNEY

Attorneys for Defendant

99 WEST MAIN ST, PO BOX 9090

SMITHTOWN, NY 11787

Upon the following papers numbered 1 - 22 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 4; Notice of Cross Motion and supporting papers 5 - 11; Answering Affidavits and supporting papers 12 - 19; Replying Affidavits and supporting papers 20 - 22; ~~Other~~; (and after hearing counsel in support and opposed to the motion) it is;

The plaintiffs seek an order pursuant to CPLR 3212 granting summary judgment and declaring that the Town of Smithtown's locally enacted law on firearm discharge is illegal in nature. The defendant opposes this application and cross moves for an order granting summary judgment.

CPLR §3212(b) states that a motion for summary judgment "shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admission." If an attorney lacks personal knowledge of the events giving rise to the cause of action or defense, his ancillary affidavit, repeating the allegations or the pleadings, without setting forth evidentiary facts, cannot support or defeat a motion by summary judgment (*Olan v. Farrell Lines, Inc.*, 105 AD 2d 653, 481 NYS 2d 370 (1st Dept., 1984; aff'd 64 NY 2d 1092, 489 NYS 2d 884 (1985); *Spearman v. Times Square Stores Corp.*, 96 AD 2d 552, 465 NYS 2d 230 (2nd Dept., 1983); Weinstein-Korn-Miller, *New York Civil Practice Sec.* 3212.09)).

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 416 NYS2d 790 [1979]). To grant

Hunters for Deer, et. al. v. Town of Smithtown
Index # 623373/2017
Page 2

summary judgment it must clearly appear that no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corporation*, 3 NY2d 395, 165 NYS2d 498 [1957]). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form . . . and must “show facts sufficient to require a trial of any issue of fact” CPLR3212 [b]; *Gilbert Frank Corp. v Federal Insurance Co.*, 70 NY2d 966, 525 NYS2d 793, 520 NE2d 512 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (*Castro v Liberty Bus Co.*, 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]). Furthermore, the evidence submitted in connection with a motion for summary judgment should be viewed in the light most favorable to the party opposing the motion (*Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]).

On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (*see S.J. Capelin Associates v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (*Prunty v Keltie's Bum Steer*, 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned and there is nothing to be tried, then summary judgment should be granted (*Prunty v Keltie's Bum Steer, supra*, citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 239 NE2d 725 [1968]; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd.*, 66 NY2d 701, 496 NYS2d 425, 487 NE2d 282).

The plaintiffs are a not for profit corporation, Hunters for Deer, Inc., and a licensed New York State hunter, Michael Lewis. They claim that “Township, such as the Town of Smithtown, are pre-empted from legislating within the areas of hunting, discharge of a bow and arrow, discharge of an air gun or, with the exception of the Village of Green Island in Albany County, discharge of a firearm.” The plaintiffs claim that Smithtown’s local code section 160 which establishes firearm discharge setbacks and related regulations is illegal.

NY ECL § 11-0931(4) states:

a. No person shall:

(1) discharge a firearm, crossbow or long bow in such a way as will result in the load, bolt, or arrow thereof passing over a public highway or any part thereof;

(2) discharge a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, public structure, or occupied factory or church;...

b. The prohibitions contained in subparagraph 2 of paragraph a above shall not apply to:

Hunters for Deer, et. al. v. Town of Smithtown
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(1) The owner or lessee of the dwelling house, or members of his immediate family actually residing therein, or a person in his employ, or the guest of the owner or lessee of the dwelling house acting with the consent of said owner or lessee, provided however, that nothing herein shall be deemed to authorize such persons to discharge a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet of any other dwelling house, or a farm building or farm structure actually occupied or used, or a school building or playground, public structure, or occupied factory or church.

NY Town § 130 states:

The town board after a public hearing may enact, amend and repeal ordinances, rules and regulations not inconsistent with law, for the following purposes in addition to such other purposes as may be contemplated by the provisions of this chapter or other laws. In order to accomplish the regulation and control of such purposes, the town board may include in any such ordinance, rule or regulation provision for the issuance and revocation of a permit or permits, for the appointment of any town officers or employees to enforce such ordinance, rule or regulation and/or the terms and conditions of any permit issued thereunder, and for the collection of any reasonable uniform fee in connection therewith. The town clerk shall give notice of such hearing by the publication of a notice in at least one newspaper circulating in the town, specifying the time when and the place where such hearing will be held, and in general terms describing the proposed ordinance. Such notice shall be published once at least ten days prior to the day specified for such hearing...

27. Firearms. In the towns of...**Smithtown...** prohibiting the discharge of firearms in areas in which such activity may be hazardous to the general public or nearby residents, and providing for the posting of such areas with signs giving notice of such regulations, **which ordinances, rules and regulations may be more, but not less, restrictive than any other provision of law.** Thirty days prior to the adoption of any ordinance changing the five hundred foot rule, a notice must be sent to the regional supervisor of fish and game of the environmental conservation department, notifying him of such intention. (Emphasis added).

Smithtown Town Code Chapter 160 states:

§ 160-2. Definitions. The following definitions shall govern the interpretation of this chapter unless otherwise expressly defined herein: FIREARM — Includes a weapon which acts by the force of gunpowder or from which a shot is

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discharged by the force of an explosion, as well as an air rifle, an air gun, a BB gun, a slingshot and a bow and arrow.

§ 160-3. Purpose. The purpose of this chapter is to prohibit any person from discharging a firearm in those areas of the Town of Smithtown in which such activity may be hazardous to the general public or nearby residents.

§ 160-4. Prohibited areas. The discharge of firearms is deemed hazardous to the general public and, therefore, prohibited in all areas of the Town of Smithtown except those areas as stipulated under § 160-5, Exceptions.

§ 160-5. Exceptions. Firearms may be discharged upon one's own property and upon the property of another with the written consent of the landowner, provided that any such discharge of firearms does not occur within 500 feet from a dwelling, school or occupied structure, or a park, beach, playground or any other place of outdoor recreational or nonrecreational activities; and further provided that any such discharge of firearms does not violate the provisions of the New York State Environmental Conservation Law.

In *Matter of Chwick v Mulvey*, 81 AD3d 161[2d Dept 2010], the court discussed both conflict preemption and field preemption. The court outlined conflict preemption and stated that

Under the doctrine of conflict preemption, a local law is preempted by a state law when a "right or benefit is expressly given . . . by . . . State law which has then been curtailed or taken away by the local law" (*Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 97, 518 NE2d 903, 524 NYS2d 8 [1987]; see *New York State Club Assn. v City of New York*, 69 NY2d at 217; *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 NY2d at 400; *DJL Rest. Corp. v City of New York*, 96 NY2d at 95). Put differently, conflict preemption occurs when a local law prohibits what a state law explicitly allows, or when a state law prohibits what a local law explicitly allows (see *Matter of Lansdown Entertainment Corp. v New York City Dept. of Consumer Affairs*, 74 NY2d 761, 762-763, 543 NE2d 725, 545 NYS2d 82 [1989] [City of New York ordinance that required cabarets to close between the hours of 4:00 a.m. and 8:00 a.m. was preempted, as it conflicted with state law that allowed patrons to remain on the premises consuming alcoholic beverages until 4:30 a.m.]; *Wholesale Laundry Bd. of Trade v City of New York*, 17 AD2d 327, 234 NYS2d 862 [1962], affd for reasons stated below 12 NY2d 998, 189 NE2d 623, 239 NYS2d 128 [1963] [local ordinance that provided for a different minimum wage than state law was preempted, as it conflicted with state minimum wage law]). In determining the applicability of conflict preemption, we examine not only the language of the local ordinance and the state statute, but also whether the direct consequences of a local ordinance "render illegal what is specifically allowed by State law" (*Matter of Lansdown Entertainment Corp. v New York City Dept. of Consumer Affairs*, 74 NY2d at 764, quoting *People v De Jesus*, 54 NY2d

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465, 472, 430 NE2d 1260, 446 NYS2d 207 [1981].

(*Matter of Chwick v Mulvey*, 81 AD3d 161, 167-168). The court also outlined field preemption and stated that

Turning to the doctrine of field preemption, "a local law regulating the same subject matter [as a state law] is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute" (*Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d at 377; see *Matter of Cohen v Board of Appeals of Vil. of Saddle Rock*, 100 NY2d at 401; *DJL Rest. Corp. v City of New York*, 96 NY2d at 95; *Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d at 97-98; *Dougal v County of Suffolk*, 102 AD2d at 532-533; *Matter of Ames v Smoot*, 98 AD2d at 218-219). "Such [local] laws, were they permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns" (*Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d at 97; see *Albany Area Bldrs. Assn. v Town of Guilderland*, 74 NY2d at 377).

Field preemption applies under any of three different scenarios (see *Consolidated Edison Co. of N.Y. v Town of Red Hook*, 60 NY2d 99, 105, 456 NE2d 487, 468 NYS2d 596 [1983]). First, an express statement in the state statute explicitly avers that it preempts all local laws on the same subject matter (see *DJL Rest. Corp. v City of New York*, 96 NY2d at 95). Second, a declaration of state policy evinces the intent of the Legislature to preempt local laws on the same subject matter (see *Robin v Incorporated Vil. of Hempstead*, 30 NY2d 347, 350, 285 NE2d 285, 334 NYS2d 129 [1972]). And third, the Legislature's enactment of a comprehensive and detailed regulatory scheme in an area in controversy is deemed to demonstrate an intent to preempt local laws (see *New York State Club Assn. v City of New York*, 69 NY2d at 217; *People v De Jesus*, 54 NY2d at 468-469).

(*Matter of Chwick v Mulvey*, 81 AD3d 161, 169-170 [2d Dept 2010].)

The plaintiffs argue that the ECL law "vests the Department of Environmental Conservation (DEC) with the authority to promulgate rules and regulations to carry out the purposes of the ECL." Plaintiffs further argue that the "outer boundary of applicable 'home rule authority' can be approximated as where the state 'has demonstrated its intent to preempt an entire field and thereby preclude any further local regulation.'"

Here the state has not preempted the entire field for regulations related to firearm discharge as evinced by NY Town § 130. This section specifically allows the Town of Smithtown, among several other towns to enact laws related to firearm discharge when "such activity may be hazardous to the general public

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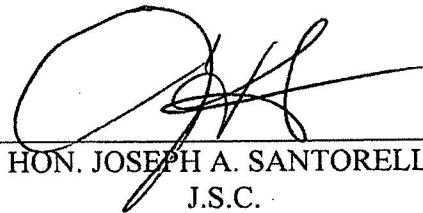
or nearby residents” and allows for those laws to “be more, but not less, restrictive than any other provision of law”. The Smithtown Town Code specifically states that firearm discharge within the Town is “deemed hazardous to the general public”. The Town does make an exception to the firearm discharge prohibition to allow firearms to be discharged “on one’s own property and upon the property of another with the written consent of the landowner” and establishes a discharge setback of 500 feet which in certain ways is more restrictive than the ECL law but authorized under NY Town § 130. Similarly there is no conflict preemption within the state statutes and town code provisions since the state laws do not specifically allow anything that the town code prohibits outside of NY Town § 130 specific language allowing the Town of Smithtown to enact firearm discharge laws.

Based upon a review of the motion papers the Court concludes that the defendant has made a prima facie showing of its entitlement to judgment as a matter of law that the Town of Smithtown’s locally enacted law on firearm discharge is not illegal in nature. The plaintiffs did not rebut that presumption in their opposition or original motion papers. Accordingly, the defendant’s cross motion for summary judgment is granted and the complaint is dismissed.

This motion by the plaintiffs for an order awarding them summary judgment is denied in all respects.

The foregoing shall constitute the decision and Order of this Court.

Dated: May 21, 2018

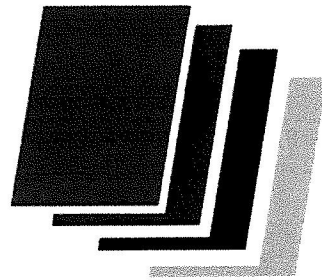


HON. JOSEPH A. SANTORELLI
J.S.C.

 X FINAL DISPOSITION ___ NON-FINAL DISPOSITION

NOTICE OF MOTION FOR LEAVE TO APPEAL

EXHIBIT D



NYLS

***BILL JACKET
SUPPLEMENT***

2014

CHAPTER 55

103 PAGES

NYLS NOTE: All materials are compiled and/or edited by NYLS.

**BUDGET: Public Protection / General Government
PART EE: Open For Fishing & Hunting II Program**

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We accept the following:



BILL MEMORANDUM

Bill Number: A. 8555-D.

Sponsor: BUDGET

Summary:

This bill would enact into law major components of legislation that are necessary to implement the Public Protection and General Government budget. Among its provisions are the following proposals:

- A Intentionally omitted.
 - B Increase driver's license sanctions for motorists under age 21 who engage in unlawful texting while driving.
 - C Extend provisions relating to the disposition of certain monies recovered by District Attorneys.
 - D Suspends transfers to the Emergency Services Revolving Loan Fund.
 - E Intentionally omitted.
 - F Relates to contracting and staffing of the Office of Information Technology Services.
 - G Extends certain procurement provisions.
 - H Enacts the "Public Trust Act," to provide campaign reform finance measures, enhance penalties for public corruption and to establish a public campaign financing system.
 - I Authorize transfers, temporary loans, and amendments to miscellaneous capital/debt provisions, including bond caps.
 - J Intentionally omitted.
 - K Extends certain provisions of the Legislative Law.
 - L Clarifies and expands eligibility for the Gold Star Annuity Program.
 - M Relates to the housing of certain prisoners, in compliance with Federal requirements.
-

- N Relates to reporting requirements for the Gun Involved Violence Elimination (GIVE) Program.
- O Relates to a Real Property Tax exemption for a certain parcels.
- P Relates to the establishment of a Corrections Officers' Memorial.
- Q Allocates funds to Public Safety Answering Points.
- R Clarifies that the Division of State Police is the agency responsible for investigating casino operator applicants.
- S Prohibits any further state prison closures until July, 2016; requires DOCCS to review security staffing at existing correctional facilities and to develop a three-year safety plan; and requires quarterly reports on assaults in correctional facilities.
- T Establishes the "Mohawk Valley and Niagara County Assessment Relief Act".
- U Relates to the Senior Citizen Rent Increase Exemption (SCRIE).
- V Provides for deficit financing and other measures for the City of Yonkers school district.
- W Provides for the transfer of State funds in support of the City of Rochester
- X Relates to the payment of VLT aid to eligible municipalities.
- Y Extends certain provisions of the Nassau County Administrative Code.
- Z Establishes a Beginning Farmers NY Fund.
- AA Establishes an MWBE Investment Fund.
- BB Makes properties of certain correctional facilities eligible for participation in the START-UP NY Program.
- CC Establishes a Faculty Development and Technology Transfer Advisory Council.
- DD Provides for a veterans entrepreneurship program.
- EE Amends various sections of law to permit hunting with crossbows and the issuance of distinctive license plates, among other things.

1 Section 1. Subdivision 1 of section 210 of the economic development
2 law, as amended by chapter 227 of the laws of 1993, is amended to read
3 as follows:

4 1. "Development centers" shall mean the business enterprise develop-
5 ment centers which provide assistance to primarily minority group
6 members, women [and]_ individuals with a disability, and veterans as
7 established by the department pursuant to section two hundred eleven of
8 this article.

9 § 2. Section 210 of the economic development law is amended by adding
10 a new subdivision 6 to read as follows:

11 6. "Veteran" shall mean a person who served in and who has received an
12 honorable or general discharge from, the United States army, navy, air
13 force, marines, coast guard, and/or reserves thereof, and/or in the army
14 national guard, air national guard, New York guard and/or the New York
15 naval militia.

16 § 3. Subdivision 1 of section 211 of the economic development law, as
17 amended by chapter 227 of the laws of 1993, is amended to read as
18 follows:

19 1. The department shall provide grants, within available appropri-
20 ations, on a competitive basis, in response to a request for proposals
21 to pilot development centers, to provide intensive community-based
22 management and technical assistance targeted primarily to minority group
23 members, women [and]_ individuals with a disability, and veterans who
24 are seeking to start or are starting new business ventures.

25 § 4. Subdivision 1 of section 212 of the economic development law, as
26 amended by chapter 301 of the laws of 1996, is amended to read as
27 follows:

28 1. The department shall establish and support, within available appro-
29 priations, entrepreneurship support centers at career education agencies
30 and not-for-profit corporations including, but not limited to, local
31 development corporations, chambers of commerce and community-based
32 organizations. The purpose of such support centers shall be to train
33 dislocated workers, individuals with a disability, minorities [and]_,
34 women, and veterans in the principles and practice of entrepreneurship
35 in order to prepare such persons to pursue self-employment opportu-
36 nities. Such support centers shall provide for training in all aspects
37 of business development and small business management as defined by the
38 commissioner. For purposes of this section, "career education agency"
39 shall mean a community college or board of cooperative educational
40 services operating within the state.

41 § 5. This act shall take effect immediately.



42 PART EE

43 Section 1. Subdivision 25 of section 11-0103 of the environmental
44 conservation law, as amended by chapter 595 of the laws of 1984, is
45 amended to read as follows:

46 25. "Hunting [accident] related incident" means the injury to or death
47 of a person caused by the discharge of a firearm, crossbow or longbow
48 while the person causing such injury or death, or the person injured or
49 killed, is taking or attempting to take game, wildlife or fish.

50 § 2. Paragraph a of subdivision 1 of section 11-0719 of the environ-
51 mental conservation law, as amended by section 26 of part R of chapter
52 58 of the laws of 2013, is amended to read as follows:

53 a. In the circumstances described in paragraph b of this subdivision
54 the department may revoke any license, bowhunting privilege, or muzzle-

1 loading privilege, of any person, to hunt, fish or trap, defined in
2 section 11-0701 of this title or issued pursuant to any provision of the
3 Fish and Wildlife Law, or it may revoke all of such licenses, bowhunting
4 privileges, or muzzle-loading privileges. It may also deny such person,
5 for a period not exceeding five years, the privilege of obtaining such
6 license or licenses, bowhunting privilege, or muzzle-loading privilege,
7 or of hunting, trapping or fishing, anywhere in the state with or with-
8 out license, bowhunting privilege, or muzzle-loading privilege, except
9 as provided in subdivision 1 of section 11-0707 of this title or in
10 section 11-0523 of this article. It may also require that such person
11 successfully complete a department-sponsored course and obtain a certifi-
12 cate of qualification in responsible hunting including responsible
13 crossbow hunting, responsible bowhunting or responsible trapping prac-
14 tices before being issued another license.

15 § 3. Subparagraph 4 of paragraph b of subdivision 1 of section 11-0719
16 of the environmental conservation law, as amended by chapter 436 of the
17 laws of 2000, is amended to read as follows:

18 (4) is convicted of an offense involving a violation of subdivisions
19 one and two of section 11-0901 of this article relating to taking of
20 wildlife when the person taking is in or on a motor vehicle while such
21 motor vehicle is on a public highway or an offense involving a violation
22 of subdivision one of section 11-0901 of this article and subparagraph
23 one of paragraph a of subdivision four of section 11-0931 of this arti-
24 cle relating to taking wildlife when the person taking is in or on a
25 motor vehicle and discharging a firearm, crossbow or longbow in such a
26 way that the load, bolt or arrow passes over a public highway or a part
27 thereof or signs an acknowledgment of any such violation for the purpose
28 of affecting a settlement by civil compromise or by stipulation.

29 § 4. Subdivisions 2 and 3 of section 11-0719 of the environmental
30 conservation law, subdivision 2 as amended by section 27 and subdivision
31 3 as amended by section 28 of part R of chapter 58 of the laws of 2013,
32 are amended to read as follows:

33 2. a. The department may revoke the licenses, tags, bowhunting privi-
34 leges, or muzzle-loading privileges, which authorize the holder to hunt
35 and/or trap wildlife, and may deny the privilege of obtaining such
36 licenses, tags, bowhunting privileges, or muzzle-loading privileges, and
37 may deny the privileges of hunting and/or trapping with or without a
38 license.

39 (1) of any person who, while engaged in hunting or trapping,
40 (i) causes death or injury to [another] any person by discharging a
41 firearm, crossbow or longbow, or

42 (ii) so negligently discharges a firearm, crossbow or longbow as to
43 endanger the life or safety of another, or

44 (iii) so negligently and wantonly discharges a firearm, crossbow or
45 longbow as to destroy or damage public or private property; or

46 (2) of any agent of the department authorized to issue certificates of
47 qualification in responsible hunting including responsible crossbow
48 hunting, bowhunting, or trapping practices who improperly issues any
49 such certification to a person whom he or she has not trained, or whom
50 he or she knows has not satisfactorily completed all of the requirements
51 necessary for such certification.

52 b. Action by the department resulting in the revocation of such
53 license or denial of the privilege to hunt and trap as provided in this
54 subdivision shall be only after a hearing held by the department upon
55 notice to the offender, at which proof of facts indicating the violation
56 is established to the satisfaction of the commissioner or of the hearing



1 officer designated by him or her and concurred in by the commissioner.
2 Provided that where a person, while hunting, causes death or injury to
3 any person by discharge of a firearm, crossbow or longbow, the commis-
4 sioner may, in his or her discretion, suspend such person's license or
5 licenses to hunt and suspend such person's right to hunt without a
6 license for a period of up to sixty days pending a hearing as provided
7 for in this subdivision.

8 c. In case such discharge of a firearm, crossbow or longbow causes
9 death or injury to [another] any person, the license or licenses,
10 bowhunting privilege, and muzzle-loading privilege shall be revoked and
11 the ability to obtain any such license and of hunting or of trapping
12 anywhere in the state with or without a license denied, for a period not
13 exceeding ten years, except that no revocation shall be made in cases in
14 which facts established at the hearing indicate to the satisfaction of
15 the commissioner that there was no negligence on the part of the shooter
16 or [bowman] bowhunter. In all other cases the license or licenses,
17 bowhunting privilege, or muzzle-loading privilege, shall be revoked and
18 the privilege of obtaining such license, bowhunting privilege, or
19 muzzle-loading privilege, and of hunting or of trapping anywhere in the
20 state with or without a license denied for a period not exceeding five
21 years. The department may also require that the person causing such
22 death or injury successfully complete a department-sponsored course and
23 obtain a certificate of qualification in responsible hunting including
24 responsible crossbow hunting or bowhunting practices before being issued
25 another hunting license.

26 d. Every person injuring himself, herself or another person in a hunt-
27 ing [accident, as such term is defined in subdivision 25 of section
28 11-0103 of this article] related incident, and the investigating law
29 enforcement officer summoned to or arriving at the scene of such [acci-
30 dent] incident shall within ten days from the occurrence of such [acci-
31 dent] incident file a report of the [accident] incident in writing with
32 the department. Every such person or law enforcement officer shall make
33 such other and additional reports as the department shall require.
34 Failure to report such [accident] incident as herein provided by the
35 person causing injury or to furnish relevant information required by the
36 department shall be a violation and shall constitute grounds for suspen-
37 sion or revocation of such person's hunting licenses and bowhunting and
38 muzzle-loading privileges and denial of the ability to obtain any such
39 license and of hunting with or without a license following a hearing or
40 opportunity to be heard. In addition, the department may temporarily
41 suspend the license of the person failing to report a hunting [accident]
42 related incident within the period prescribed herein until such report
43 has been filed. In the case of a non-resident, the failure to report an
44 [accident] incident as herein provided shall constitute grounds for
45 suspension or revocation of his or her privileges of hunting within this
46 state. The report required by this section shall be made in such form
47 and number as the department may prescribe.

48 3. A hunting license issued to a person who is at least twelve and
49 less than sixteen years of age or a hunting license with bowhunting
50 privilege issued to a person who is between the ages of twelve and
51 sixteen years may be revoked by the department upon proof satisfactory
52 to the department that such person, while under the age of sixteen, has
53 engaged in hunting [wildlife] with a gun, crossbow or longbow, in
54 circumstances in which a license and/or bowhunting or muzzle-loading
55 privilege is required, while not accompanied by his or her parent, guar-
56 dian or other adult as provided in section 11-0929 of this article.

1 Additionally, the department may revoke the hunting and/or bowhunting or
2 muzzle-loading privilege of any parent, guardian, youth mentor or other
3 adult upon proof satisfactory to the department that such person allowed
4 the holder of a hunting license, bowhunting privilege or muzzle-loading
5 privilege to hunt with a gun, crossbow or longbow in violation of
6 section 11-0929 of this article. If such license or privilege is revoked
7 the department shall fix the period of such revocation, which is not to
8 exceed six years. The department may require that such person success-
9 fully complete a department sponsored course and obtain a certificate of
10 qualification in responsible hunting including responsible crossbow
11 hunting, or responsible bowhunting practices before being issued another
12 hunting or bowhunting license.

13 § 5. Paragraphs b and g of subdivision 3 and subparagraph 1 of para-
14 graph d of subdivision 4 of section 11-0901 of the environmental conser-
15 vation law, paragraph b of subdivision 3 as amended by chapter 911 of
16 the laws of 1990, paragraph g of subdivision 3 as amended by chapter 34
17 of the laws of 1979, subparagraph 1 of paragraph d of subdivision 4 as
18 amended by chapter 600 of the laws of 1993, are amended to read as
19 follows:

20 b. Wild deer and bear shall not be taken except by gun, crossbow or by
21 long bow. Where an open season, set forth in the table of open seasons
22 in section 11-0907 of this title or otherwise established by law or
23 fixed by regulation, is specified as an open season for taking such game
24 by shotgun or long bow only, or is specified as an open season for
25 taking such game by long bow only, they shall not be taken except as so
26 specified.

27 g. Wildlife shall not be taken [by the use of a cross-bow, by a long
28 bow drawn, pulled, released, or held in a drawn position by any mechan-
29 ical device attached to a portion of the bow other than the bowstring,
30 or] by the use of a device commonly called a spear gun.

31 (1) such long bow or crossbow is unstrung, or such a firearm is taken
32 down, or securely fastened in a case, or locked in the trunk of a vehi-
33 cle, or

34 § 6. Subparagraphs 5, 6 and 8 of paragraph b of subdivision 4 of
35 section 11-0901 of the environmental conservation law, subparagraph 5 as
36 amended by chapter 430 of the laws of 2000, subparagraphs 6 and 8 as
37 amended by chapter 600 of the laws of 1993, are amended and a new
38 subparagraph 9 is added to read as follows:

39 (5) with [a bow other than] a long bow with a draw weight [in excess]
40 of less than thirty-five pounds; or

41 (6) with an arrow or bolt with an arrowhead that measures less than
42 seven-eighths of an inch at its widest point or that has fewer than two
43 sharp cutting edges; or

44 (8) with an arrow with a barbed broadhead arrowhead[.]; or

45 (9) with a crossbow unless such crossbow shall consist of a bow and
46 string, either compound or recurve, that launches a minimum fourteen
47 inch bolt, not including point, mounted upon a stock with a trigger that
48 holds the string and limbs under tension until released. The trigger
49 unit of such crossbow must have a working safety. The minimum limb width
50 of such crossbow shall be seventeen inches, have a minimum peak draw
51 weight of one hundred pounds and a maximum peak draw weight of two
52 hundred pounds. The minimum overall length of such crossbow from butts-
53 tock to front of limbs shall be twenty-four inches.

54 § 7. Subparagraphs 5, 6 and 8 of paragraph c of subdivision 4 of
55 section 11-0901 of the environmental conservation law, subparagraph 5 as
56 amended by chapter 430 of the laws of 2000, and subparagraphs 6 and 8 as



1 amended by chapter 600 of the laws of 1993, are amended and a new
2 subparagraph 9 is added to read as follows:

3 (5) with [a bow other than] a long bow with a draw weight [in excess]
4 of less than thirty-five pounds; or

5 (6) with an arrow or bolt with an arrowhead that measures less than
6 seven-eighths of an inch at its widest point or that has fewer than two
7 sharp cutting edges; or

8 (8) with an arrow with a barbed broadhead arrowhead[.]; or

9 (9) with a crossbow unless such crossbow shall consist of a bow and
10 string, either compound or recurve, that launches a minimum fourteen
11 inch bolt, not including point, mounted upon a stock with a trigger that
12 holds the string and limbs under tension until released. The trigger
13 unit of such crossbow must have a working safety. The minimum limb width
14 of such crossbow shall be seventeen inches, have a minimum peak draw
15 weight of one hundred pounds and a maximum peak draw weight of two
16 hundred pounds. The minimum overall length of such crossbow from butts-
17 tock to front of limbs shall be twenty-four inches.

18 § 8. Subdivisions 2 and 4 of section 11-0931 of the environmental
19 conservation law, subdivision 2 as amended by section 7 of part H of
20 chapter 58 of the laws of 2012, subparagraph 3 of paragraph a of subdivi-
21 sion 4 as added by chapter 400 of the laws of 1973 and subparagraph 4
22 of paragraph a of subdivision 4 as added by chapter 67 of the laws of
23 1976, are amended to read as follows:

24 2. No crossbow or firearm except a pistol or revolver shall be carried
25 or possessed in or on a motor vehicle unless it is uncocked, for a
26 crossbow or unloaded, for a firearm in both the chamber and the maga-
27 zine, except that a loaded firearm which may be legally used for taking
28 migratory game birds may be carried or possessed in a motorboat while
29 being legally used in hunting migratory game birds, and no person except
30 a law enforcement officer in the performance of his official duties
31 shall, while in or on a motor vehicle, use a jacklight, spotlight or
32 other artificial light upon lands inhabited by deer if he or she is in
33 possession or is accompanied by a person who is in possession, at the
34 time of such use, of a longbow, crossbow or a firearm of any kind except
35 a pistol or revolver, unless such longbow or crossbow is unstrung or
36 such firearm or crossbow is taken down or securely fastened in a case or
37 locked in the trunk of the vehicle. For purposes of this subdivision,
38 motor vehicle shall mean every vehicle or other device operated by any
39 power other than muscle power, and which shall include but not be limit-
40 ed to automobiles, trucks, motorcycles, tractors, trailers and motor-
41 boats, snowmobiles and snowtravelers, whether operated on or off public
42 highways. Notwithstanding the provisions of this subdivision, the
43 department may issue a permit to any person who is non-ambulatory,
44 except with the use of a mechanized aid, to possess a loaded firearm in
45 or on a motor vehicle as defined in this section, subject to such
46 restrictions as the department may deem necessary in the interest of
47 public safety. Nothing in this section permits the possession of a
48 pistol or a revolver contrary to the penal law.

49 4. a. No person shall:

50 (1) discharge a firearm, crossbow or long bow in such a way as will
51 result in the load, bolt, or arrow thereof passing over a public highway
52 or any part thereof;

53 (2) discharge a firearm [or long bow] within five hundred feet, a long
54 bow within one hundred fifty feet, or a crossbow within two hundred
55 fifty feet from a dwelling house, farm building or farm structure actu-

1 ally occupied or used, school building, school playground, public struc-
2 ture, or occupied factory or church;

3 (3) use a firearm or a long bow for the hunting of migratory game
4 birds in Larchmont Harbor, specifically those portions bounded by the
5 following points of land:

6 BEGINNING AT A POINT KNOWN AS UMBRELLA POINT ON THE EAST SHORE OF
7 LARCHMONT HARBOR THEN PROCEEDING IN A NORTHERLY DIRECTION TO CEDAR
8 ISLAND; THENCE NORTHWESTERLY TO MONROE INLET; THENCE NORTHEASTERLY TO
9 DELANCY COVE BEING IN THE TOWN OF MAMARONECK; THENCE IN A SOUTHWESTERLY
10 DIRECTION FROM DELANCY COVE TO GREACEN POINT; THENCE RUNNING THE AREA
11 BETWEEN DELANCY COVE AND THE WEST SHORE OF SATANS TOE NORTHEAST; THENCE
12 SOUTHEAST THEN ALONG THE WEST SHORE OF SATANS TOE SOUTHWEST AND THEN
13 SOUTH TO THE SOUTHERLY POINT OF SATANS TOE TO EDGEWATER POINT.

14 (4) Use of a firearm or a long bow for the hunting of migratory game
15 birds in Udall's Cove, specifically those portions of Little Neck Bay
16 within Nassau and Queens counties lying east of a line running north
17 from the foot of Douglaston Parkway to the shore opposite.

18 b. The prohibitions contained in subparagraph 2 of paragraph a above
19 shall not apply to:

20 (1) The owner or lessee of the dwelling house, or members of his imme-
21 diate family actually residing therein, or a person in his employ, or
22 the guest of the owner or lessee of the dwelling house acting with the
23 consent of said owner or lessee, provided however, that nothing herein
24 shall be deemed to authorize such persons to discharge a firearm [or
25 longbow] within five hundred feet, a long bow within one hundred fifty
26 feet, or a crossbow within two hundred fifty feet of any other dwelling
27 house, or a farm building or farm structure actually occupied or used,
28 or a school building or playground, public structure, or occupied facto-
29 ry or church;

30 (2) Programs conducted by public schools offering instruction and
31 training in the use of firearms or long bow;

32 (3) The authorized use of a pistol, rifle or target range regularly
33 operated and maintained by a police department or other law enforcement
34 agency or by any duly organized membership corporation;

35 (4) The discharge of a shotgun over water by a person hunting migrato-
36 ry game birds if no dwelling house, farm building or farm structure
37 actually occupied or used, school building, school playground, or public
38 structure, factory or church, livestock or person is situated in the
39 line of discharge less than five hundred feet from the point of
40 discharge.

41 § 9. Paragraph c of subdivision 5 of section 11-0931 of the environ-
42 mental conservation law, as amended by chapter 309 of the laws of 2006,
43 is amended to read as follows:

44 c. In the Northern Zone no person, while engaged in hunting with the
45 aid of a dog or while afield accompanied by a dog, shall possess a rifle
46 larger than .22 caliber using rim-fire ammunition or possess a shotgun
47 loaded with a slug, ball or buckshot, or possess a crossbow; but this
48 paragraph does not apply to persons, engaged in coyote hunts with dogs
49 during any open season on coyotes established pursuant to the provisions
50 of section 11-0903 of this title.

51 § 10. Paragraph 4 of subdivision a of section 265.20 of the penal
52 law, as amended by chapter 1041 of the laws of 1974, is amended to read
53 as follows:

54 4. Possession of a rifle, shotgun, crossbow or longbow for use while
55 hunting, trapping or fishing, by a person, not a citizen of the United

1 States, carrying a valid license issued pursuant to section 11-0713 of
2 the environmental conservation law.

3 § 11. Paragraph a and the opening paragraph of paragraph b of subdivi-
4 sion 2 of section 11-0929 of the environmental conservation law, as
5 amended by section 13 of part R of chapter 58 of the laws of 2013, are
6 amended to read as follows:

7 a. hunt wildlife with a gun, crossbow or longbow, other than wild deer
8 or bear as provided in paragraph b of this subdivision, unless he or she
9 is accompanied by his or her parent or legal guardian holding a hunting
10 license, or by a person eighteen years of age or older, designated in
11 writing by his or her parent or legal guardian, holding such license;

12 hunt wild deer or bear with a crossbow or gun unless:

13 § 12. Section 11-0713 of the environmental conservation law is amended
14 by adding a new subdivision 6 to read as follows:

15 6. The department shall require training in the safe use of hunting
16 with a crossbow and safe hunting practices in the basic hunter education
17 course required for all new hunters. All persons who have completed
18 hunter education and who have not certified their completion of a safety
19 course which includes crossbow hunting training prior to April first,
20 two thousand fourteen shall complete an online or other training program
21 approved by the department prior to using a crossbow to hunt.

22 § 13. Subdivision 15 of section 11-0901 of the environmental conserva-
23 tion law, as amended by chapter 81 of the laws of 1988, is amended to
24 read as follows:

25 15. Notwithstanding any inconsistent provision of this section, the
26 department may [issue a permit to take] adopt regulations to allow the
27 taking of big game or small game by the use of a long bow equipped with
28 a mechanical device for holding and releasing the bowstring, attached to
29 the handle section of an otherwise legal long bow, to any person with a
30 physical disability who is [permanently] physically incapable of drawing
31 and holding a long bow because of a physical [handicap or] disability,
32 subject to such restrictions as the department may [deem necessary in
33 the interest of public safety] adopt by regulation. For the purpose of
34 this subdivision, a person with a physical disability shall mean any
35 person who submits to the department a statement of a physician duly
36 licensed to practice medicine that such person is physically incapable
37 of arm movement sufficient to draw, hold and release a long bow as
38 defined in subdivision four of this section or as otherwise defined in
39 department regulation. The department is authorized to adopt regulations
40 requiring documentation to establish that an applicant is eligible to
41 use a mechanical device pursuant to this subdivision.

42 § 14. Paragraph a of subdivision 1 and paragraph a of subdivision 2 of
43 section 11-0907 of the environmental conservation law, paragraph a of
44 subdivision 1 as amended by section 37 of part F of chapter 82 of the
45 laws of 2002, and paragraph a of subdivision 2 as amended by chapter 600
46 of the laws of 1993, item (b) of paragraph a of subdivision 2 as amended
47 by section 1 of chapter 600 of the laws of 2005, item (d) of paragraph a
48 of subdivision 2 as separately amended by chapter 108 of the laws of
49 1995 and section 1 of chapter 600 of the laws of 2005, item (f) of para-
50 graph a of subdivision 2 as separately amended by chapters 144 and 159
51 of the laws of 2013, item (i) of paragraph a of subdivision 2 as amended
52 by chapter 231 of the laws of 2012, item (k) of paragraph a of subdivi-
53 sion 2 as added by chapter 144 of the laws of 2013, and item (k) of
54 paragraph a of subdivision 2 as added by chapter 159 of the laws of
55 2013, are amended and a new subdivision 10 is added to read as follows:

1 a. Wild deer without antlers or having antlers measuring less than
 2 three inches in length shall not be taken unless it is taken (1) by long
 3 bow in a special long bow season established in subdivision 3 of this
 4 section, or (2) by muzzle-loading firearm or crossbow in a special
 5 muzzle-loading firearm season established in subdivision 8 of this
 6 section, or (3) by long bow in Westchester and Suffolk Counties in a
 7 year in which a regular season for deer of either sex is established for
 8 such counties, or (4) in a special open season for deer of either sex
 9 fixed by regulation pursuant to subdivision 5 or 7 of section 11-0903 of
 10 this title, or (5) pursuant to a special antlerless deer license in a
 11 special open season for antlerless deer in a tract within a Wilderness
 12 Hunting Area fixed by regulation pursuant to subdivision 6 of section
 13 11-0903 of this title, or (6) pursuant to a deer management permit by a
 14 person eligible to take such deer pursuant thereto as provided in
 15 section 11-0913 of this title, or (7) pursuant to a permit issued to an
 16 eligible non-ambulatory person, pursuant to subdivision 2 of section
 17 11-0931 of this title, while in possession of a valid license issued by
 18 the department which authorizes the holder to hunt big game. Nothing in
 19 this subparagraph shall be construed to limit the power of the depart-
 20 ment to designate by regulation an area or areas of the state consisting
 21 of a county or part of a county where such season shall apply and wheth-
 22 er the number of such special permits shall be limited.

23 a. Regular open hunting seasons for deer are established separately
 24 for the named regions or parts of regions, or named counties listed in
 25 column one of the table set forth in this subdivision, and are specified
 26 as seasons for taking by pistol, rifle, shotgun or long bow, or for
 27 taking by shotgun, crossbow or long bow only, or for taking by long bow
 28 only, as indicated in column three entitled "Manner of Taking". Where
 29 taking of big game by shotgun is permitted by this chapter such shotgun
 30 may contain rifling in all or a portion of the barrel, provided, howev-
 31 er, if the barrel or a portion thereof does contain rifling only shells
 32 having non-metallic cases, except for the base, may be used. In the
 33 areas identified in column one except in the "closed areas" specified in
 34 subdivision [5] five of this section the game specified in column two
 35 may be taken in the open season stated in column two immediately follow-
 36 ing the specification of the game, in the manner specified in column
 37 three.

38

TABLE

39	Column One	Column Two	Column Three
40	Area	Game and Open Season	Manner of Taking
41	(a) Northern Zone	Deer, next to last	Pistol, rifle,
42		Saturday in October	<u>shotgun, crossbow</u>
43		through first Sunday	or long bow
44		in December	
45	(b) Catskill region	Deer, first Monday	Pistol, rifle,
46	except Delaware,	after November 15	<u>shotgun, crossbow</u>
47	Greene, Sullivan,	through first Tuesday	or long bow
48	Ulster counties	after December 7	
49	and those counties		
50	or portions thereof		
51	listed in item (i)		
52	of this paragraph		



1	(c) Counties of	Deer, first Monday	Pistol, rifle,
2	Delaware, Greene,	after November 15	<u>shotgun, crossbow</u>
3	Sullivan and Ulster	through first Tuesday	or long bow
4		after December 7	
5	(d) Eastern region,	Deer, first Monday	Pistol, shotgun,
6	except Columbia,	after November 15	<u>crossbow,</u>
7	Fulton, Orange,	through first Tuesday	muzzle loading
8	Rensselaer, Saratoga,	after December 7	firearm or
9	Washington Counties		long bow only
10	and those counties		
11	or portions thereof		
12	listed in item (i)		
13	of this paragraph		
14	(e) Fulton, Saratoga,	Deer, first Monday	Pistol, rifle,
15	Washington (parts	after November 15	<u>shotgun, crossbow</u>
16	in the Southern	through first Tuesday	or long bow
17	zone), Columbia,	after December 7	
18	Orange, and		
19	Rensselaer		
20	counties		
21	(f) Southern tier,	Deer, first	Pistol, shotgun,
22	central and Western	Monday after November	<u>crossbow,</u>
23	region, except those	15 through first	muzzle loading
24	counties or portions	Tuesday after	firearm or
25	thereof listed in	December 7	long bow only
26	item (i) [or] (k)		
27	<u>or (l)</u> of this		
28	paragraph		
29	(g) Westchester	Deer of either sex,	long bow only
30	County	November 1 through	
31		December 31	
32	(h) Suffolk County	Deer of either sex	long bow only
33		Second Monday in	
34		November through	
35		December thirty-first	
36	(i) The counties of	Deer, the first Monday	Pistol, shotgun,
37	Allegany, Cattaraugus,	after November 15	<u>crossbow,</u>
38	Cayuga, Chautauqua	through first Tuesday	muzzle loading
39	except that portion	after December 7	firearm, rifle or
40	of the county north		long bow only
41	of route 20, Chemung,		
42	Chenango, Herkimer,		
43	Madison,		
44	Montgomery, Oneida,		
45	Oswego, Otsego,		
46	Schoharie, Schuyler,		
47	Steuben, Tioga,		
48	Wyoming and Yates		
49	and that portion of		
50	the county of		

1 Broome east of the
2 Susquehanna river

3	(k) The county of	Deer, the first	Pistol, shotgun,
4	Ontario	Saturday after November	<u>crossbow,</u>
5		15 through first Sunday	muzzle loading
6		after December 7	firearm, rifle or
7			long bow only

8	[(k)] (l) The county of	Deer, the first	Pistol, shotgun,
9	Wayne	Saturday after November	<u>crossbow,</u>
10		15 through first Sunday	muzzle loading
11		after December 7	firearm, rifle
12			or long bow only

13 10. Notwithstanding any provision of this chapter, or any prior
 14 notwithstanding language in this article, the department may, by requ-
 15 lition, authorize the taking of big game by the use of a crossbow by any
 16 licensed person in any big game season in any area designated in items
 17 (a), (b), (c), (d), (e), (f), (i), (k) and (l) of paragraph a of subdivi-
 18 vision two of this section in which a shotgun or muzzle loader is
 19 permitted provided however, that any crossbow use during an archery-only
 20 season shall only take place during the last fourteen consecutive days
 21 of such archery-only season in the southern zone provided that such
 22 archery-only season shall consist of not less than forty-five days and
 23 only during the last ten consecutive days of any archery-only season in
 24 the northern zone provided that such archery-only season shall consist
 25 of no less than twenty-three days. Any muzzle loading season which
 26 occurs at the same time as a special archery season may only occur
 27 during times when crossbows are authorized to be used.

28 § 15. Paragraph a of subdivision 2 of section 11-0907 of the environ-
 29 mental conservation law, as amended by chapter 95 of the laws of 1974,
 30 the opening paragraph as amended by chapter 11 of the laws of 1988,
 31 column 2 of item (a) as amended by chapter 344 of the laws of 1979,
 32 items (b), (d), and (f) as amended by section 2 of chapter 600 of the
 33 laws of 2005, column 2 of item (g) as amended by chapter 92 of the laws
 34 of 1980, item (h) as added by chapter 643 of the laws of 1977, column 2
 35 of item (h) as amended by chapter 332 of the laws of 1986, and item (i)
 36 as separately amended by chapters 111 and 155 of the laws of 2013, is
 37 amended to read as follows:

38 a. Regular open hunting seasons for big game are established separate-
 39 ly for the named regions or parts of regions, or named counties listed
 40 in column one of the table set forth in this subdivision, and are speci-
 41 fied as seasons for taking by pistol, rifle, shotgun or long bow, or for
 42 taking by shotgun or long bow only, or for taking by long bow only, as
 43 indicated in column three entitled "Manner of Taking". Where taking of
 44 big game by shotgun is permitted by this chapter such shotgun may
 45 contain rifling in all or a portion of the barrel, provided, however, if
 46 the barrel or a portion thereof does contain rifling only shells having
 47 non-metallic cases, except for the base, may be used. In the areas iden-
 48 tified in column one except in the "closed areas" specified in subdivi-
 49 sion 5 the game specified in column two may be taken in the open season
 50 stated in column two immediately following the specification of the
 51 game, in the manner specified in column three.

52

TABLE



1 2	Column One Area	Column Two Game and Open Season	Column Three Manner of Taking
3 4 5 6	(a) Northern Zone	Deer and bear, next to last Saturday in October through first Sunday in December	Pistol, rifle, shotgun, <u>crossbow</u> or long bow
7 8 9 10 11 12 13 14	(b) Catskill region except Delaware, Greene, Sullivan, Ulster counties and those counties or portions thereof listed in item (i) of this paragraph	Deer and bear, first Monday after November 15 through first Tuesday after December 7	Pistol, rifle, shotgun, <u>crossbow</u> or long bow
15 16 17 18 19 20 21 22 23	(c) Counties of Delaware, Greene, Sullivan and Ulster	Deer, first Monday after November 15 through first Tuesday after December 7; Bear, first Monday after November 15 through second Tuesday after December 7	Pistol, rifle, shotgun, <u>crossbow</u> or long bow
24 25 26 27 28 29 30 31 32	(d) Eastern region, except Columbia, Fulton, Orange, Rensselaer, Saratoga, Washington Counties and those counties or portions thereof listed in item (i) of this paragraph	Deer and bear, first Monday after November 15 through first Tuesday after December 7	Pistol, shotgun, <u>crossbow</u> , muzzle loading firearm or long bow only
33 34 35 36 37 38 39	(e) Fulton, Saratoga, Washington (parts in the Southern zone), Columbia, Orange, and Rensselaer counties	Deer and bear, first Monday after November 15 through first Tuesday after December 7	Pistol, rifle, shotgun, <u>crossbow</u> or long bow
40 41 42 43 44 45 46	(f) Southern tier, central and Western region, except those counties or portions thereof listed in item (i) of this paragraph	Deer and bear, first Monday after November 15 through first Tuesday after December 7	Pistol, shotgun, <u>crossbow</u> , muzzle loading firearm or long bow only
47 48 49	(g) Westchester County	Deer of either sex, November 1 through December 31	Long bow only

1	(h) Suffolk County	Deer of either sex	long bow only
2		Second Monday in	
3		November through	
4		December thirty-first	
5	(i) The counties of	Deer and bear, the	Pistol, shotgun,
6	Allegany, Cattaraugus,	first Monday after	<u>crossbow,</u>
7	Chautauqua except	November 15 through	muzzle loading
8	that portion of the	first Tuesday after	firearm, rifle or
9	county north of route	December 7	long bow only
10	20, Chenango,		
11	Herkimer, Montgomery,		
12	Oneida, Oswego,		
13	Otsego, Schoharie,		
14	Tioga and Wyoming		
15	and that portion		
16	of the county		
17	of Broome east of the		
18	Susquehanna river		

19 § 16. Paragraphs a and b of subdivision 8 of section 11-0907 of the
 20 environmental conservation law, paragraph a as amended by section 11 of
 21 part R of chapter 58 of the laws of 2013, paragraph b as amended by
 22 chapter 241 of the laws of 1997, are amended to read as follows:

23 a. In every area identified in column one of the table set forth in
 24 subdivision [2] two of this section, except those areas restricted to
 25 special seasons for taking deer by longbow only, special open seasons
 26 may be established by regulation for taking deer and/or bear, by the use
 27 of muzzle-loading firearms, of not less than .44 caliber shooting a
 28 single projectile, or by the use of a crossbow, by the holders of a
 29 hunting license with a valid muzzle-loading privilege.

30 b. Such special open season for the Southern Zone shall be for the
 31 seven day period immediately preceding the regular open season for deer
 32 stated in column two of the table set forth in subdivision [2] two of
 33 this section, except that the department may, by regulation, fix such
 34 open season in the Southern Zone or any portion thereof to be either the
 35 seven days immediately preceding or immediately following the regular
 36 open season for deer, provided, however, that any taking of deer or bear
 37 by the use of a crossbow in a season or special season in which the
 38 muzzle loader is the only firearm permitted shall succeed the regular
 39 open hunting season for deer established pursuant to subdivision two of
 40 of this section.

41 § 17. Subdivision 9 of section 11-0701 of the environmental conserva-
 42 tion law, as amended by section 1-a of part R of chapter 58 of the laws
 43 of 2013, is amended to read as follows:

44 9. A muzzle-loading privilege when included on a hunting license enti-
 45 tles a holder who is fourteen years of age or older to hunt wild deer
 46 and bear with a muzzle-loading firearm or crossbow, as provided in title
 47 9 of this article, in a special muzzle-loading firearm season.

48 § 18. a. In no event shall the department of environmental conserva-
 49 tion authorize the taking of big game by the use of a crossbow during
 50 any archery-only season prior to the last fourteen days of such season
 51 in the southern zone, or during any archery-only season prior to the
 52 last ten days of such season in the northern zone.

53 b. In no event shall the department authorize the taking of big game
 54 by the use of a crossbow in any area designated in items (a), (b), (c),

1 (d), (e), (f), (i), (k) and (l) of paragraph a of subdivision 2 of
2 section 11-0907 of the environmental conservation law for which the use
3 of shotgun or muzzle loader is not authorized as a manner of taking
4 pursuant to such paragraph.

5 c. In no event shall the department of environmental conservation
6 authorize hunting with a crossbow by a person less than 14 years old.

7 d. In no event shall the department of environmental conservation
8 establish any muzzle loading season which occurs at the same time as a
9 special archery season unless it is at the same time as when crossbows
10 are authorized to be used.

11 § 19. Paragraph c of subdivision 3 of section 11-0901 of the environ-
12 mental conservation law, as amended by chapter 825 of the laws of 1973,
13 subparagraph 1 as amended by chapter 407 of the laws of 1976, is amended
14 to read as follows:

15 c. Wild small game and wild upland game birds shall be taken only by
16 longbow or gun, or by the use of raptors as provided in title 10 of this
17 article, except that:

18 (1) skunk, raccoon, bobcat, coyote, fox, mink and muskrat may be taken
19 in any manner not prohibited in this section or in title 11 of the Fish
20 and Wildlife Law[, and];

21 (2) frogs may also be taken by spearing, catching with the hands, or
22 by the use of a club or hook[.]; and

23 (3) crossbows may be used but only by licensees who are fourteen years
24 of age or older.

25 § 20. Subdivision 1 of section 11-0929 of the environmental conserva-
26 tion law, as amended by section 13 of part R of chapter 58 of the laws
27 of 2013, is amended to read as follows:

28 1. A licensee who is twelve or thirteen years of age shall not hunt
29 wildlife with a gun or a longbow unless he or she is accompanied by his
30 or her parent or legal guardian, or by a person twenty-one years of age
31 or older designated in writing by his or her parent or legal guardian on
32 a form prescribed by the department, who holds a hunting license. A
33 licensee who is twelve or thirteen years of age shall not hunt with a
34 crossbow.

35 § 21. Paragraph a of subdivision 1 of section 11-0701 of the environ-
36 mental conservation law, as amended by section 1-a of part R of chapter
37 58 of the laws of 2013, is amended to read as follows:

38 a. entitles a holder who is twelve or thirteen years of age to hunt
39 wildlife, except big game, as provided in title 9 of this article
40 subject, specifically, to the provisions of section 11-0929 of this
41 article. It entitles such holder to possess firearms as provided in
42 section 265.05 of the penal law. A holder who is twelve or thirteen
43 years of age shall not hunt with a crossbow.

44 § 22. The environmental conservation law is amended by adding a new
45 section 11-0933 to read as follows:

46 § 11-0933. Taking small game by crossbow.

47 Notwithstanding any provision of this chapter, or any prior notwith-
48 standing language in this article, the department may, by regulation,
49 authorize the taking of small game and wild upland game birds by the use
50 of a crossbow by any licensed person fourteen years of age or older, in
51 any small game season, in any area designated in items (a), (b), (c),
52 (d), (e), (f), (i), (k), and (l) of paragraph a of subdivision two of
53 section 11-0907 of this title in which a shotgun or muzzle loader is
54 permitted.

55 § 23. Section 11-0715 of the environmental conservation law is amended
56 by adding a new subdivision 7 to read as follows:

1 7. Notwithstanding the provisions of subdivision three of this
 2 section, the commissioner may offer for sale licenses, privileges and
 3 permits listed in this section at a reduced price up to ten days per
 4 year to encourage resident and out-of-state hunters, trappers and
 5 anglers to utilize New York's hunting, trapping and fishing opportu-
 6 nities. These days shall be designated in a manner determined by the
 7 department to best provide public notice thereof and to maximize public
 8 participation therein.

9 § 24. Subdivision 14 of section 11-0305 of the environmental conserva-
 10 tion law, as amended by chapter 292 of the laws of 1996 and as renum-
 11 bered by section 2 of part F of chapter 82 of the laws of 2002, is
 12 amended to read as follows:

13 14. Notwithstanding any inconsistent provision of law, the commission-
 14 er may designate no more than [two] eight days in each year that shall
 15 be effective in every administrative region of the department, as free
 16 sport fishing days during which any person may, without having a sport
 17 fishing license and without the payment of any fee, exercise the privi-
 18 leges of a holder of a sport fishing license, subject to all of the
 19 limitations, restrictions, conditions, laws, rules and regulations
 20 applicable to the holder of a sport fishing license. Free sport fishing
 21 days shall be designated in a manner determined by the department to
 22 best provide public notice thereof and to maximize public participation
 23 therein, so as to promote the recreational opportunities afforded by
 24 sport fishing.

25 § 25. Subparagraph 7 of paragraph a and subparagraph 3 of paragraph b
 26 of subdivision 3 of section 11-0715 of the environmental conservation
 27 law, as amended by chapter 276 of the laws of 2013, are amended to read
 28 as follows:

29 (7) Seven-day fishing [\$13.00] \$12.00
 30 (3) Seven-day fishing [\$31.00] \$28.00

31 § 26. Section 404-s of the vehicle and traffic law, as added by chap-
 32 ter 304 of the laws of 2001, is amended by adding three new subdivisions
 33 3, 4 and 5 to read as follows:

34 3. A distinctive plate issued pursuant to this section to a person who
 35 purchases a lifetime license pursuant to section 11-0702 of the environ-
 36 mental conservation law or a lifetime vehicle access pass, also known as
 37 a lifetime empire passport, pursuant to article thirteen of the parks,
 38 recreation and historic preservation law between January first, two
 39 thousand fourteen and December thirty-first, two thousand fourteen shall
 40 be issued in the same manner as other number plates upon the payment of
 41 the regular registration fee prescribed by section four hundred one of
 42 this article; provided, however, that commencing upon the third regis-
 43 tration period after the initial issuance of such plate, an additional
 44 annual service charge of fifteen dollars shall be charged for such
 45 plate. Such service charge shall be deposited and made available in the
 46 same manner as set forth in subdivision two of this section. Addi-
 47 tionally, such person shall be exempt from the payment of (a) the twen-
 48 ty-five dollar fee required to be paid for the issuance of a set of
 49 reflectorized number plates pursuant to paragraph a of subdivision three
 50 of section four hundred one of this article, and (b) the fee of three
 51 dollars and twenty-five cents for the issuance of a new set of number
 52 plates pursuant to paragraph b of subdivision three of section four
 53 hundred one of this article.

54 4. A person who, prior to January first, two thousand fourteen,
 55 possesses a lifetime license pursuant to section 11-0702 of the environ-
 56 mental conservation law or a lifetime vehicle access pass, also known as

1 a lifetime empire passport, or a three or five year vehicle access pass
2 pursuant to article thirteen of the parks, recreation and historic pres-
3 ervation law shall, on request between April first, two thousand four-
4 teen and March thirty-first, two thousand fifteen, be issued a distinc-
5 tive plate pursuant to this section in the same manner as other number
6 plates upon the payment of the regular registration fee prescribed by
7 section four hundred one of this article; provided, however, that
8 commencing upon the third registration period after the initial issuance
9 of such plate, an additional annual service charge of fifteen dollars
10 shall be charged for such plate. Such service charge shall be deposited
11 and made available in the same manner as set forth in subdivision two of
12 this section. Additionally, such person shall be exempt from the
13 payment of the fee of three dollars and twenty-five cents for the issu-
14 ance of a new set of number plates pursuant to paragraph b of subdivi-
15 sion three of section four hundred one of this article.

16 5. Any New York resident who possesses a hunting, fishing or trapping
17 license issued pursuant to title seven of article eleven of the environ-
18 mental conservation law or an annual vehicle access pass, also known as
19 an empire passport, pursuant to article thirteen of the parks, recre-
20 ation and historic preservation law shall, upon request, be issued the
21 distinctive plate available to a person who purchases a lifetime license
22 or passport, which shall be issued in the same manner as other number
23 plates upon the payment of the regular registration fee prescribed by
24 section four hundred one of this article; provided, however, that an
25 additional annual service charge of fifteen dollars shall be charged for
26 such plate. Such service charge shall be deposited and made available in
27 the same manner as set forth in subdivision two of this section.

28 § 27. This act shall take effect April 1, 2014 provided that if this
29 act shall take effect after April 1, 2014, this act shall take effect
30 immediately and shall be deemed to have been in full force and effect on
31 and after April 1, 2014; provided, however, that the amendments to para-
32 graph a of subdivision 2 of section 11-0907 of the environmental
33 conservation law made by section fourteen of this act shall be subject
34 to the expiration and reversion of such paragraph pursuant to section 13
35 of chapter 600 of the laws of 1993, as amended, when upon such date the
36 provisions of section fifteen of this act shall take effect.

37

PART FF

38 Section 1. Chapter 350 of the laws of 2012 relating to the conveyance
39 of land formerly used as an armory to the town of Brookhaven, county of
40 Suffolk, section 3 as amended by chapter 161 of the laws of 2013, is
41 amended to read as follows:

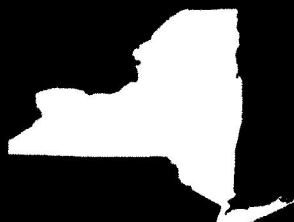
42 Section 1. Subject to the provisions of this act but notwithstanding
43 any other provision of law to the contrary, the commissioner of general
44 services is hereby authorized to transfer and convey to the [town of
45 Brookhaven] North Patchogue Fire District in consideration of one dollar
46 and upon such other conditions as the commissioner may deem proper, land
47 formerly used as an armory, and further described in section two of this
48 act.

49 § 2. The lands authorized by this act to be transferred and conveyed
50 are as follows:

51 ALL that tract or parcel of land situate, lying and being in the Town
52 of Brookhaven, County of Suffolk and State of New York, described as
53 follows:



**Building on
Success**



2014 STATE OF THE STATE

January 8, 2014

Governor Andrew M. Cuomo

carry a driver's license, *and* a fishing license, *and* a hunting license *and* a Boater Safety Certificate, lifetime license holders will now have the option of having *one* New York State Adventure License—a driver's license that includes icons for all of an individual's lifetime license designations, the Boater Safety Certificate and the newly created lifetime State Parks' Empire Pass.



Expand Opportunities for Hunting, Fishing and Other Activities

Governor Cuomo recognizes that sportsmen and sportswomen are the original stewards of our lands and drive a significant tourist industry across the state, with 1.3 million sportsmen and sportswomen contributing more than \$9.2 billion to New York's economy.¹⁹

In 2013, the Governor launched the NY Open for Fishing and Hunting initiative by reducing the cost and complexity of fishing and hunting licenses, making it easier and more affordable for New Yorkers and tourists to participate in the state's rich sporting tradition.

The Governor pledged to continue to find ways to improve the sporting experience, and in 2014, is

proposing to invest in access, infrastructure and opportunity for the sporting community.

The Governor proposes a bold new outdoors initiative to create 50 new access projects to connect hunters, anglers, bird watchers and other outdoors enthusiasts to untapped State-owned lands across New York. These proposed projects include building new boat launches, installing new hunting blinds and constructing new trails and parking areas. Each project represents a small local investment that will have a lasting effect on the statewide sporting experience.

New York has some of the most beautiful landscapes, treasured wildlife and varied settings for everyone to enjoy. For those New Yorkers who do not participate in hunting and fishing, these proposals will expand access to the scenic and wildlife treasures of the state. Access enhancements will allow appropriate human interaction while maintaining critical habitat protection.

In addition, Governor Cuomo is committed to enacting two changes that will create a more appealing and competitive sporting state.

By authorizing the Department of Environmental Conservation to regulate crossbow hunting, the

Governor will resolve a lapsed temporary fix, make New York competitive with neighboring states and provinces, enhance New York's hunting destination reputation and give clarity to the sporting businesses that have held crossbows on their shelves for one year.

The Governor also proposes clarifying the limits on the liability of landowners who allow recreational activities on their property. Landowners who have voluntarily opened their

land for the public's use should not be exposed to lawsuits that result from accidents on their property. Current law



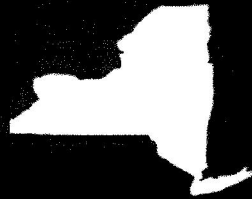
***The Governor proposes
a bold new outdoors
initiative to create 50
new access projects.***

leaves too much open to interpretation, which leads to pre-emptive closures because landowners are unsure of their liability exposure. Clarifying landowners' rights and liability protections could open up vast, untapped resources for hunting, fishing, and many other popular recreational pursuits.

These measures reflect the Governor's continued commitment to make New York Open for Fishing and Hunting.



**Building on
Success**



2014-15 EXECUTIVE BUDGET

January 21, 2014

Governor Andrew M. Cuomo

Robert L. Megna, Director of the Budget



- **Expand Opportunities for Hunting, Fishing and Other Activities.** Building on last year's Open for Fishing and Hunting initiative, the Governor announced in the State of the State a new NYS Adventure License to allow lifetime hunters, anglers and Empire Pass license holders the option of receiving a special designation on their driver's license. The Executive Budget continues this commitment to outdoor recreation. The State will undertake 50 projects to provide access to more than 380,000 acres of existing State lands for recreation, including boat launches, bird watching areas, trails, and hunting blinds. Fish hatcheries around the State will also be rehabilitated. Further, to encourage hunting and fishing across the State, new 3- and 5-year hunting and fishing licenses have been created, the seven-day fishing license fee has been reduced, and the DEC will be able to offer promotional reduced fee licenses on designated days and more free sport fishing days each year. Lastly, the Budget will give the Department of Environmental Conservation the authority to regulate crossbow hunting and will also limit liability for landowners who wish to open up their properties for public recreation.
- **Expand Access to New York Grown Agricultural Products.** Building on last year's success, the Executive Budget includes \$1.1 million for the "Taste NY" program. This program is branding and expanding New York's food and beverage industry by making the wide variety of foods and beverages grown and produced in the State readily available and recognizable to New Yorkers and the public nationwide. The Budget also includes \$350,000 for the FreshConnect farmers' market program, which benefits farmers' and consumers alike by awarding competitive grants to create and expand farmers markets in underserved communities throughout New York. To increase the availability of locally grown hops for the State's growing craft brew industry, the Budget continues \$40,000 for a program to evaluate and test hop varieties in New York.
- **Cornell University College of Veterinary Medicine.** The Executive Budget includes a \$5 million initial State investment to expand and upgrade infrastructure and teaching facilities at the Cornell University College of Veterinary Medicine, to accommodate larger class sizes.
- **Maintain Core Agriculture and Markets Local Assistance Funding.** Core agricultural programs that protect health and safety, provide education, and support the promotion of New York State products will be maintained at the same level as the 2013-14 Budget. These programs include the Migrant Childcare program, Cornell Veterinary Diagnostic Laboratory, Cornell Pro-Dairy, the Wine and Grape Foundation, and Farm Family Assistance.



Preliminary Report on the State Fiscal Year 2014-15 Enacted Budget

April 2014

**Thomas P. DiNapoli
New York State Comptroller**

The Enacted Budget includes a three year extension of the State pesticide registration fee, but omits an Executive Budget proposal to eliminate reporting on pesticide use.



The Enacted Budget authorizes the use of crossbows during certain New York State hunting seasons and extends by one year, to December 31 2015, the date by which heavy duty diesel vehicles operated under contract with the State must be retrofitted to employ emission reduction technology.

The Enacted Budget authorizes the creation of a 12 member (6 from New York and 6 from New Jersey) Rockland Bergen Flood Mitigation Task Force. The Task Force is charged with identifying existing and projected flood hazards in the New York/New Jersey border region and developing a plan to remediate these hazards.

Parks

The SFY 2014-15 Enacted Budget includes \$386 million in All Funds appropriations for the Office of Parks, Recreation and Historic Preservation (Parks), an increase of \$500,000 from the Executive Budget, reflecting funding added for Natural Heritage Trust initiatives.

The Enacted Budget includes \$92.5 million in capital appropriations from the New York Works program for State parks infrastructure projects and \$52 million in other capital appropriations for facilities maintenance at State parks and historic sites. Of the New York Works funding, \$2.5 million is allocated to the Olympic Regional Development Authority (ORDA) for maintenance of facilities, in addition to \$6.9 in Capital funding appropriated for this purpose in the ORDA budget.

Agriculture

The Enacted Budget includes \$172 million in All Funds appropriations for the Department of Agriculture and Markets, an increase of \$8.5 million over the Executive Budget.

The Enacted Budget exempts from the New York State Corporate Franchise Tax farmers' corporations that are organized on a co-operative basis. The Budget restores \$8.4 million in local assistance funding over the Executive Budget proposal, and appropriates \$2.5 million in New York Works program funding and \$3 million in other Capital funds for maintenance of facilities at the State Fair.

In addition, the Enacted Budget creates two programs to support new farmers. The Young Farmer Debt Forgiveness Program would provide 10 full-time farmers with up to \$50,000 to assist in paying off student loans. The Beginning Farmers NY Fund is authorized to make grants to support farmers who have not produced an agricultural product for more than ten years, farmers who demonstrate innovative agricultural techniques and farmers who operate farms of 150 acres or less. The Fund is to be managed by the Empire State Development Corporation and funded with any eligible funds.

STATE OF NEW YORK

S. 6357

A. 8557

SENATE - ASSEMBLY

January 21, 2014

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the highway law and to amend chapter 329 of the laws of 1991, amending the state finance law and other laws relating to the establishment of the dedicated highway and bridge trust fund, in relation to the consolidated local street and highway improvement program (CHIPS), suburban highway improvement program (SHIPS), multi-modal and Marchiselli programs; and to repeal certain provisions of chapter 329 of the laws of 1991 relating thereto (Part A); to amend part F of chapter 56 of the laws of 2011 permitting authorized state entities to utilize the design-build method for infrastructure projects, in relation to allowing authorized local entities to utilize the design-build method for infrastructure projects, and in relation to the effectiveness thereof (Part B); to amend part U1 of chapter 62 of the laws of 2003 amending the vehicle and traffic law and other laws relating to increasing certain motor vehicle transaction fees, in relation to the effectiveness thereof; to amend chapter 84 of the laws of 2002, amending the state finance law relating to the costs of the department of motor vehicles, in relation to permanently authorizing payment of department of motor vehicle costs from the dedicated highway and bridge trust fund; to amend the transportation law, in relation to disposition of revenues; to amend the highway law, in relation to disposition of fees charged in connection with outdoor advertising on highways; and to amend the state finance law, in relation to the dedication of revenues and the costs of rail and truck regulation (Part C); to amend chapter 58 of the laws of 2013, relating to the hours of operation of the department of motor vehicles and providing for the repeal of such provisions upon expiration thereof, in relation to the effectiveness thereof (Part D); to amend the vehicle and traffic law and the state finance law, in relation to the authorization of the department of motor vehicles to provide the accident prevention course internet program; to amend chapter 751 of the

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

LBD12673-01-4

1 Every person who sells or offers for sale pesticides shall file, at
2 least annually, a report or reports containing such information with the
3 department in electronic or printed form on or before February first for
4 the prior calendar year.

5 b. The requirements of this subdivision are not applicable to: minimum
6 risk pesticides; general use antimicrobial pesticides, except those that
7 are subject to the pesticide applicator certification requirements in
8 regulations promulgated by the department; general use pesticide
9 products applied to the clothing or skin; or general use aerosol
10 products with a directed spray in containers of eighteen fluid ounces or
11 less, but not including any fogger product or aerosol product that
12 discharges to a wide area.

13 § 6. Section 33-1207 of the environmental conservation law, as added
14 by chapter 279 of the laws of 1996, is amended to read as follows:

15 § 33-1207. Recordkeeping and reporting by importers and manufacturers.

16 1. Each person manufacturing or compounding a registered [restricted
17 use] pesticide in this state, or importing or causing a registered
18 [restricted use] pesticide to be imported into this state for use,
19 distribution, or storage, shall maintain records of all sales within the
20 state during the preceding year of each [restricted use] pesticide prod-
21 uct which he or she has imported, manufactured or compounded. The record
22 of each [restricted use] pesticide product shall include:

- 23 a. EPA registration number;
24 b. container size; and
25 c. number of containers sold to New York purchasers.

26 2. Such records shall be maintained for a period of not less than
27 three years. All manufacturers and importers shall file an annual
28 report containing such information with the department [on computer
29 diskette] in electronic or [in] printed form on or before February first
30 for the prior calendar year.

31 3. The requirements of this section are not applicable to: minimum
32 risk pesticides; general use antimicrobial pesticides, except those that
33 are subject to the pesticide applicator certification requirements in
34 regulations promulgated by the department; general use pesticide
35 products applied to the clothing or skin; or general use aerosol
36 products with a directed spray in containers of eighteen fluid ounces or
37 less, but not including any fogger product or aerosol product that
38 discharges to a wide area.

39 § 7. This act shall take effect immediately and shall be deemed to
40 have been in full force and effect on and after April 1, 2014.

41

PART I

42 Section 1. Subdivision 25 of section 11-0103 of the environmental
43 conservation law, as amended by chapter 595 of the laws of 1984, is
44 amended to read as follows:

45 25. "Hunting [accident]" related incident" means the injury to or
46 death of a person caused by the discharge of a firearm, crossbow or
47 longbow while the person causing such injury or death, or the person
48 injured or killed, is taking or attempting to take game, wildlife or
49 fish.

50 § 2. Paragraphs 1 and 2 of subdivision 3 and subdivision 5 of section
51 11-0701 of the environmental conservation law, as amended by section 1-a
52 of part R of chapter 58 of the laws of 2013, are amended to read as
53 follows:

1 (1) who is between the ages of twelve and sixteen years to hunt wild
2 deer and bear with a longbow or crossbow during the special archery
3 season and during the regular season, as provided in title 9 of this
4 article, subject to the provisions of section 11-0929 and subdivision 3
5 of section 11-0713 of this article;

6 (2) who is eighteen years of age or older to hunt wild deer and bear
7 with a longbow or crossbow, as provided in title 9 of this article, in a
8 special [longbow] archery season; and

9 5. A non-resident bear tag entitles a person who has not been a resi-
10 dent of the state for more than thirty days who also possesses a hunting
11 license to hunt bear during the regular open season therefor or in an
12 open season fixed by regulation pursuant to subdivision eight of section
13 11-0903 of this article. It entitles a non-resident holder who also
14 possesses a hunting license with bowhunting privilege to hunt bear with
15 a longbow or crossbow during the open bear season. It entitles a non-re-
16 sident holder who also possesses a hunting license with muzzle-loading
17 privilege to hunt bear with a muzzleloader during the open bear season.

18 § 3. Paragraph b of subdivision 6 of section 11-0703 of the environ-
19 mental conservation law, as amended by section 2 of part R of chapter 58
20 of the laws of 2013, is amended to read as follows:

21 b. Except as provided in section 11-0707 and section 11-0709 of this
22 title, no person shall (1) hunt wild deer or bear unless such person
23 holds and is entitled to exercise the privileges of a hunting license,
24 and meets the requirements of this article; (2) hunt wild deer or bear
25 with a longbow or crossbow in a special [longbow] archery season unless
26 such person holds and is entitled to exercise the privileges of a hunt-
27 ing license with a bowhunting privilege and meets the requirements of
28 this article; or (3) hunt wild deer or bear with a muzzle-loading
29 firearm in a special muzzle-loading firearm season unless such person is
30 at least fourteen years old and holds a hunting license with a muzzle-
31 loading privilege and meets the requirements of this article.

32 § 4. Subparagraph 4 of paragraph b of subdivision 1 of section 11-0719
33 of the environmental conservation law, as amended by chapter 436 of the
34 laws of 2000, is amended to read as follows:

35 (4) is convicted of an offense involving a violation of subdivisions
36 one and two of section 11-0901 of this article relating to taking of
37 wildlife when the person taking is in or on a motor vehicle while such
38 motor vehicle is on a public highway or an offense involving a violation
39 of subdivision one of section 11-0901 of this article and subparagraph
40 one of paragraph a of subdivision four of section 11-0931 of this arti-
41 cle relating to taking wildlife when the person taking is in or on a
42 motor vehicle and discharging a firearm, crossbow or longbow in such a
43 way that the load, bolt or arrow passes over a public highway or a part
44 thereof or signs an acknowledgment of any such violation for the purpose
45 of affecting a settlement by civil compromise or by stipulation.

46 § 5. Subdivisions 2 and 3 of section 11-0719 of the environmental
47 conservation law, subdivision 2 as amended by section 27 and subdivision
48 3 as amended by section 28 of part R of chapter 58 of the laws of 2013,
49 are amended to read as follows:

50 2. a. The department may revoke the licenses, tags, bowhunting privi-
51 leges, or muzzle-loading privileges, which authorize the holder to hunt
52 and/or trap wildlife, and may deny the privilege of obtaining such
53 licenses, tags, bowhunting privileges, or muzzle-loading privileges, and
54 may deny the privileges of hunting and/or trapping with or without a
55 license.

56 (1) of any person who, while engaged in hunting, fishing or trapping,



1 (i) causes death or injury to [another] any person by discharging a
2 firearm, crossbow or longbow, or
3 (ii) so negligently discharges a firearm, crossbow or longbow as to
4 endanger the life or safety of another, or
5 (iii) so negligently and wantonly discharges a firearm, crossbow or
6 longbow as to destroy or damage public or private property; or
7 (2) of any agent of the department authorized to issue certificates of
8 qualification in responsible hunting, bowhunting, or trapping practices
9 who improperly issues any such certification to a person whom he or she
10 has not trained, or whom he or she knows has not satisfactorily
11 completed all of the requirements necessary for such certification.

12 b. Action by the department resulting in the revocation of such
13 license or denial of the privilege to hunt and trap as provided in this
14 subdivision shall be only after a hearing held by the department upon
15 notice to the offender, at which proof of facts indicating the violation
16 is established to the satisfaction of the commissioner or of the hearing
17 officer designated by him or her and concurred in by the commissioner.
18 Provided that where a person, while hunting, causes death or injury to
19 any person by discharge of a firearm, crossbow or longbow, the commis-
20 sioner may, in his or her discretion, suspend such person's license or
21 licenses to hunt and suspend such person's right to hunt without a
22 license for a period of up to sixty days pending a hearing as provided
23 for in this subdivision.

24 c. In case such discharge of a firearm, crossbow or longbow causes
25 death or injury to [another] any person, the license or licenses,
26 bowhunting privilege, and muzzle-loading privilege shall be revoked and
27 the ability to obtain any such license and of hunting or of trapping
28 anywhere in the state with or without a license denied, for a period not
29 exceeding ten years, except that no revocation shall be made in cases in
30 which facts established at the hearing indicate to the satisfaction of
31 the commissioner that there was no negligence on the part of the shooter
32 or [bowman] bowhunter. In all other cases the license or licenses,
33 bowhunting privilege, or muzzle-loading privilege, shall be revoked and
34 the privilege of obtaining such license, bowhunting privilege, or
35 muzzle-loading privilege, and of hunting or of trapping anywhere in the
36 state with or without a license denied for a period not exceeding five
37 years. The department may also require that the person causing such
38 death [or], injury, endangerment or property damage successfully
39 complete a department-sponsored course and obtain a certificate of qual-
40 ification in responsible hunting or bowhunting practices before being
41 issued another hunting license.

42 d. Every person injuring himself, herself or another person in a hunt-
43 ing [accident, as such term is defined in subdivision 25 of section
44 11-0103 of this article] related incident, and the investigating law
45 enforcement officer summoned to or arriving at the scene of such [acci-
46 dent] incident shall within ten days from the occurrence of such [acci-
47 dent] incident file a report of the [accident] incident in writing with
48 the department. Every such person or law enforcement officer shall make
49 such other and additional reports as the department shall require.
50 Failure to report such [accident] incident as herein provided by the
51 person causing injury or to furnish relevant information required by the
52 department shall be a violation and shall constitute grounds for suspen-
53 sion or revocation of such person's hunting licenses and bowhunting and
54 muzzle-loading privileges and denial of the ability to obtain any such
55 license and of hunting with or without a license following a hearing or
56 opportunity to be heard. In addition, the department may temporarily

1 suspend the license of the person failing to report a hunting [accident]
2 related incident within the period prescribed herein until such report
3 has been filed. In the case of a non-resident, the failure to report an
4 [accident] incident as herein provided shall constitute grounds for
5 suspension or revocation of his or her privileges of hunting within this
6 state. The report required by this section shall be made in such form
7 and number as the department may prescribe.

8 3. A hunting license issued to a person who is at least twelve and
9 less than sixteen years of age or a hunting license with bowhunting
10 privilege issued to a person who is between the ages of twelve and
11 sixteen years may be revoked by the department upon proof satisfactory
12 to the department that such person, while under the age of sixteen, has
13 engaged in hunting wildlife with a gun, crossbow or longbow, in circum-
14 stances in which a license and/or bowhunting or muzzle-loading privilege
15 is required, while not accompanied by his or her parent, guardian or
16 other adult as provided in section 11-0929 of this article. Addi-
17 tionally, the department may revoke the hunting and/or bowhunting or
18 muzzle-loading privilege of any parent, guardian, youth mentor or other
19 adult upon proof satisfactory to the department that such person allowed
20 the holder of a hunting license, bowhunting privilege or muzzle-loading
21 privilege to hunt wildlife with a gun, crossbow or longbow in violation
22 of section 11-0929 of this article. If such license or privilege is
23 revoked the department shall fix the period of such revocation, which is
24 not to exceed six years. The department may require that such person
25 successfully complete a department sponsored course and obtain a certifi-
26 cate of qualification in responsible hunting or responsible bowhunting
27 practices before being issued another hunting or bowhunting license.

28 § 6. Paragraphs b and g of subdivision 3, subparagraphs 5, 6 and 8 of
29 paragraph b, subparagraphs 5, 6 and 8 of paragraph c, and subparagraph 1
30 of paragraph d of subdivision 4 of section 11-0901 of the environmental
31 conservation law, paragraph b of subdivision 3 as amended by chapter 911
32 of the laws of 1990, paragraph g of subdivision 3 as amended by chapter
33 34 of the laws of 1979, subparagraph 5 of paragraph b and subparagraph 5
34 of paragraph c of subdivision 4 as amended by chapter 430 of the laws of
35 2000 and subparagraphs 6 and 8 of paragraph b, subparagraphs 6 and 8 of
36 paragraph c and subparagraph 1 of paragraph d of subdivision 4 as
37 amended by chapter 600 of the laws of 1993, are amended to read as
38 follows:

39 b. Wild deer and bear shall not be taken except by gun, crossbow or by
40 long bow. Where an open season, set forth in the table of open seasons
41 in section 11-0907 of this title or otherwise established by law or
42 fixed by regulation, is specified as an open season for taking such game
43 by shotgun or long bow only, or is specified as an open season for
44 taking such game by long bow only, they shall not be taken except as so
45 specified.

46 g. Wildlife shall not be taken [by the use of a cross-bow, by a long
47 bow drawn, pulled, released, or held in a drawn position by any mechan-
48 ical device attached to a portion of the bow other than the bowstring,
49 or] by the use of a device commonly called a spear gun.

50 (5) with a [bow other than a] long bow with a draw weight [in excess]
51 of less than thirty-five pounds; or

52 (6) with an arrow or bolt with an arrowhead that measures less than
53 seven-eighths of an inch at its widest point or that has fewer than two
54 sharp cutting edges; or

55 (8) with an arrow or bolt with a barbed broadhead arrowhead.

1 (5) with a [bow other than a] long bow with a draw weight [in excess]
2 of less than thirty-five pounds; or

3 (6) with an arrow or bolt with an arrowhead that measures less than
4 seven-eighths of an inch at its widest point or that has fewer than two
5 sharp cutting edges; or

6 (8) with an arrow or bolt with a barbed broadhead arrowhead.

7 (1) such long bow or crossbow is unstrung, or such a firearm is taken
8 down, or securely fastened in a case, or locked in the trunk of a vehi-
9 cle, or

10 § 7. Subdivisions 11 and 16 of section 11-0901 of the environmental
11 conservation law are REPEALED.

12 § 8. Section 11-0903 of the environmental conservation law is amended
13 by adding a new subdivision 12 to read as follows:

14 12. Notwithstanding any inconsistent provision of this article, the
15 department is authorized to adopt regulations which authorize the taking
16 of wildlife by the use of a crossbow. A summary of regulations adopted
17 pursuant to this subdivision shall be published each year in the hunting
18 syllabus issued pursuant to section 11-0323 of this article.

→ 19 § 9. Subdivisions 2 and 4 of section 11-0931 of the environmental
20 conservation law, subdivision 2 as amended by section 7 of part H of
21 chapter 58 of the laws of 2012, subparagraph 3 of paragraph a of subdi-
22 vision 4 as added by chapter 400 of the laws of 1973 and subparagraph 4
23 of paragraph a of subdivision 4 as added by chapter 67 of the laws of
24 1976, are amended to read as follows:

25 2. No crossbow or firearm except a pistol or revolver shall be carried
26 or possessed in or on a motor vehicle unless it is uncocked, for a
27 crossbow or unloaded, for a firearm in both the chamber and the maga-
28 zine, except that a loaded firearm which may be legally used for taking
29 migratory game birds may be carried or possessed in a motorboat while
30 being legally used in hunting migratory game birds, and no person except
31 a law enforcement officer in the performance of his official duties
32 shall, while in or on a motor vehicle, use a jacklight, spotlight or
33 other artificial light upon lands inhabited by deer if he is in
34 possession or is accompanied by a person who is in possession, at the
35 time of such use, of a longbow, crossbow or a firearm of any kind except
36 a pistol or revolver, unless such longbow or crossbow is unstrung or
37 such firearm or crossbow is taken down or securely fastened in a case or
38 locked in the trunk of the vehicle. For purposes of this subdivision,
39 motor vehicle shall mean every vehicle or other device operated by any
40 power other than muscle power, and which shall include but not be limit-
41 ed to automobiles, trucks, motorcycles, tractors, trailers and motor-
42 boats, snowmobiles and snowtravelers, whether operated on or off public
43 highways. Notwithstanding the provisions of this subdivision, the
44 department may issue a permit to any person who is non-ambulatory,
45 except with the use of a mechanized aid, to possess a loaded firearm in
46 or on a motor vehicle as defined in this section, subject to such
47 restrictions as the department may deem necessary in the interest of
48 public safety. Nothing in this section permits the possession of a
49 pistol or a revolver contrary to the penal law.

50 4. a. No person shall:

51 (1) discharge a firearm, crossbow or long bow in such a way as will
52 result in the load, bolt or arrow thereof passing over a public highway
53 or any part thereof;

54 (2) discharge a firearm [or long bow] within five hundred feet or a
55 crossbow or long bow within one hundred fifty feet from a dwelling
56 house, farm building or farm structure actually occupied or used, school

1 building, school playground, or occupied public structure, factory or
2 church;

3 (3) use a firearm, crossbow or a long bow for the hunting of migratory
4 game birds in Larchmont Harbor, specifically those portions bounded by
5 the following points of land:

6 BEGINNING AT A POINT KNOWN AS UMBRELLA POINT ON THE EAST SHORE OF
7 LARCHMONT HARBOR THEN PROCEEDING IN A NORTHERLY DIRECTION TO CEDAR
8 ISLAND; THENCE NORTHWESTERLY TO MONROE INLET; THENCE NORTHEASTERLY TO
9 DELANCY COVE BEING IN THE TOWN OF MAMARONECK; THENCE IN A SOUTHWESTERLY
10 DIRECTION FROM DELANCY COVE TO GREACEN POINT; THENCE RUNNING THE AREA
11 BETWEEN DELANCY COVE AND THE WEST SHORE OF SATANS TOE NORTHEAST; THENCE
12 SOUTHEAST THEN ALONG THE WEST SHORE OF SATANS TOE SOUTHWEST AND THEN
13 SOUTH TO THE SOUTHERLY POINT OF SATANS TOE TO EDGEWATER POINT.

14 (4) Use of a firearm, crossbow or a long bow for the hunting of migra-
15 tory game birds in UGall's Cove, specifically those portions of Little
16 Neck Bay within Nassau and Queens counties lying east of a line running
17 north from the foot of Douglaston Parkway to the shore opposite.

18 b. The prohibitions contained in subparagraph 2 of paragraph a above
19 shall not apply to:

20 (1) The owner or lessee of the dwelling house, or members of his imme-
21 diate family actually residing therein, or a person in his employ, or
22 the guest of the owner or lessee of the dwelling house acting with the
23 consent of said owner or lessee, provided however, that nothing herein
24 shall be deemed to authorize such persons to discharge a firearm [or
25 longbow] within five hundred feet or a crossbow or long bow within one
26 hundred fifty feet of any other dwelling house, or a farm building or
27 farm structure actually occupied or used, or a school building or play-
28 ground or occupied public structure, factory or church;

29 (2) Programs conducted by the department, public or private elementary
30 or secondary schools offering instruction and training in the use of
31 firearms, crossbow or long bow;

32 (3) The authorized use of a pistol, rifle or target range regularly
33 operated and maintained by a police department or other law enforcement
34 agency or by any duly organized membership corporation;

35 (4) The discharge of a shotgun over water by a person hunting migrato-
36 ry game birds if no dwelling house, farm building or farm structure
37 actually occupied or used, school building, school playground, or occu-
38 piated public structure, factory or church, livestock or person is situ-
39 ated in the line of discharge less than five hundred feet from the point
40 of discharge.

41 § 10. Paragraph c of subdivision 5 of section 11-0931 of the environ-
42 mental conservation law, as amended by chapter 309 of the laws of 2006,
43 is amended to read as follows:

44 c. In the Northern Zone no person, while engaged in hunting with the
45 aid of a dog or while afield accompanied by a dog, shall possess a rifle
46 larger than .22 caliber using rim-fire ammunition or possess a shotgun
47 loaded with a slug, ball or buckshot, or possess a crossbow; but this
48 paragraph does not apply to persons, engaged in coyote hunts with dogs
49 during any open season on coyotes established pursuant to the provisions
50 of section 11-0903 of this title.

51 § 11. Paragraph 4 of subdivision a of section 265.20 of the penal law,
52 as amended by chapter 1041 of the laws of 1974, is amended to read as
53 follows:

54 4. Possession of a rifle, shotgun, crossbow or longbow for use while
55 hunting, trapping or fishing, by a person, not a citizen of the United

1 States, carrying a valid license issued pursuant to section 11-0713 of
2 the environmental conservation law.

3 § 12. Paragraph a of subdivision 1 of section 9-103 of the general
4 obligations law, as separately amended by chapters 141 and 286 of the
5 laws of 1984, is amended to read as follows:

6 a. an owner, lessee or occupant of premises, whether or not posted as
7 provided in section 11-2111 of the environmental conservation law, owes
8 no duty: (1) to keep the premises safe for entry, passage over premises
9 or use by others for hunting, fishing, organized gleaning as defined in
10 section seventy-one-y of the agriculture and markets law, canoeing,
11 boating, swimming, trapping, hiking, cross-country skiing, tobogganing,
12 sledding, speleological activities, horseback riding, bicycle riding,
13 hang gliding, motorized vehicle operation for recreational purposes,
14 snowmobile operation, cutting or gathering of wood for non-commercial
15 purposes or], training of dogs, and any other recreational use; or (2)
16 to give warning of any hazardous condition or use of or structure or
17 activity on such premises to persons entering for such purposes;

18 § 13. Subdivision 3 of section 9-103 of the general obligations law is
19 renumbered subdivision 4 and a new subdivision 3 is added to read as
20 follows:

21 3. For the purposes of this section the term "occupant" shall include,
22 but not be limited to, those organizations, entities, or persons who
23 individually or collectively develop and/or maintain trails and other
24 recreational facilities for non-commercial use by the public.

25 § 14. Section 11-0323 of the environmental conservation law is amended
26 by adding a new subdivision 3 to read as follows:

27 3. Notwithstanding subdivision two of section three of the New York
28 state printing and public documents law, the department may enter into
29 contracts with any responsive and responsible bidder to provide the
30 printing services required with or without the use of a subcontractor
31 for the production of the hunting and fishing pamphlets and syllabus set
32 forth in subdivisions one and two of this section or any other publica-
33 tions that may be issued in support of the fish and wildlife law.

34 § 15. Section 404-s of the vehicle and traffic law, as added by chap-
35 ter 304 of the laws of 2001, is amended by adding three new subdivisions
36 3, 4 and 5 to read as follows:

37 3. A distinctive plate issued pursuant to this section to a person who
38 purchases a lifetime license pursuant to section 11-0702 of the environ-
39 mental conservation law or a lifetime vehicle access pass, also known as
40 a lifetime empire passport, pursuant to article thirteen of the parks,
41 recreation and historic preservation law between January first, two
42 thousand fourteen and December thirty-first, two thousand fourteen shall
43 be issued in the same manner as other number plates, however, such life-
44 time license holder shall be exempt from the payment of fees otherwise
45 required to be paid pursuant to paragraphs a and b of subdivision three
46 of section four hundred one of this article and the annual service
47 charge required by subdivision two of this section for the initial issu-
48 ance of such license plate and for the next ensuing registration
49 renewal.

50 4. A person who possesses a lifetime license pursuant to section
51 11-0702 of the environmental conservation law or a lifetime vehicle
52 access pass, also known as a lifetime empire passport, or a three or
53 five year vehicle access pass pursuant to article thirteen of the parks,
54 recreation and historic preservation law shall, on request between April
55 first, two thousand fourteen and March thirty-first, two thousand
56 fifteen, be issued a distinctive plate pursuant to this section in the

1 same manner as other number plates upon payment of a twenty-five dollar
 2 registration fee prescribed by section four hundred one of this chapter
 3 for the initial license plate and shall be exempt from the payment of
 4 fees otherwise required to be paid pursuant to paragraph b of subdivi-
 5 sion three of section four hundred one of this article and the annual
 6 service charge required by subdivision two of this section for the
 7 initial issuance of such license plate and for the next ensuing regis-
 8 tration renewal.

9 5. Any New York resident who possesses a hunting, fishing or trapping
 10 license issued pursuant to title seven of article eleven of the environ-
 11 mental conservation law or an annual vehicle access pass, also known as
 12 an empire passport, pursuant to article thirteen of the parks, recre-
 13 ation and historic preservation law may purchase the license plate
 14 available to a person who purchases a lifetime license or passport upon
 15 payment of the regular registration fee prescribed by section four
 16 hundred one of this chapter.

17 § 16. Section 11-0715 of the environmental conservation law is amended
 18 by adding a new subdivision 7 to read as follows:

19 7. Notwithstanding the provisions of subdivision three of this
 20 section, the commissioner may offer for sale licenses, privileges and
 21 permits listed in this section at a reduced price up to ten days per
 22 year to encourage resident and out-of-state hunters, trappers and
 23 anglers to utilize New York's hunting, trapping and fishing opportu-
 24 nities. These days shall be designated in a manner determined by the
 25 department to best provide public notice thereof and to maximize public
 26 participation therein.

27 § 17. Subdivision 14 of section 11-0305 of the environmental conserva-
 28 tion law, as amended by chapter 292 of the laws of 1996 and as renum-
 29 bered by section 2 of part F of chapter 82 of the laws of 2002, is
 30 amended to read as follows:

31 14. Notwithstanding any inconsistent provision of law, the commission-
 32 er may designate no more than [two] eight days in each year that shall
 33 be effective in every administrative region of the department, as free
 34 sport fishing days during which any person may, without having a sport
 35 fishing license and without the payment of any fee, exercise the privi-
 36 leges of a holder of a sport fishing license, subject to all of the
 37 limitations, restrictions, conditions, laws, rules and regulations
 38 applicable to the holder of a sport fishing license. Free sport fishing
 39 days shall be designated in a manner determined by the department to
 40 best provide public notice thereof and to maximize public participation
 41 therein, so as to promote the recreational opportunities afforded by
 42 sport fishing.

43 § 18. Subdivision 5 of section 11-0703 of the environmental conserva-
 44 tion law is amended by adding a new paragraph e to read as follows:

45 e. Any three or five-year license issued pursuant to paragraph a or b
 46 of subdivision three of section 11-0715 shall be effective for the
 47 number of license years indicated thereon beginning on September first
 48 and ending August thirty-first; provided, however, that a fishing
 49 license shall remain effective for either three or five years from the
 50 date on which it was issued.

51 § 19. Paragraphs a and b of subdivision 3 of section 11-0715 of the
 52 environmental conservation law, as amended by chapter 276 of the laws of
 53 2013, are amended to read as follows:

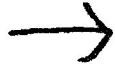
54 a. In the case of persons who meet the criteria set forth in paragraph
 55 c of subdivision four of section 11-0703 of this title:

56 License Fee

2014-15 NEW YORK STATE EXECUTIVE BUDGET

**TRANSPORTATION
ECONOMIC DEVELOPMENT AND
ENVIRONMENTAL CONSERVATION
ARTICLE VII LEGISLATION**

MEMORANDUM IN SUPPORT



PART	DESCRIPTION	STARTING PAGE NUMBER
I	Implement Open for Fishing and Hunting II by enhancing New York's fish and wildlife program, including authorizing the use of crossbows, creating 3- and 5-year hunting, fishing and trapping licenses, reducing 7-day fishing license fees, authorizing promotional reduced license fees and 6 additional free fishing days, increasing the availability of private property for recreational activities; and authorizing distinctive license plates	11
J	Authorize the Department of Agriculture and Markets to withhold the renewal of a food processing license to establishments that have outstanding penalties of \$2,400 or more	13
K	Authorize the New York State Energy Research and Development Authority to finance a portion of its research, development and demonstration, and policy and planning programs, and to finance the Department of Environmental Conservation's climate change program, from an assessment on gas and electric corporations	14
L	Authorize and direct the Comptroller to receive for deposit to the credit of the General Fund a payment of up to \$913,000 from the New York State Energy Research and Development Authority	15
M	Require retail gasoline outlets located in strategic locations in upstate New York to have emergency back-up power capacity	15
N	Extend for one year the authority of the Secretary of State to charge increased fees for expedited handling of documents	17
O	Authorize the Department of State to send copies of incorporation certificates to each county clerk electronically	17
P	Authorize the State to charge the fee required by federal law for including real estate appraisers on the federal National Registry of real appraisers	18
Q	Authorize the Department of Health to finance certain activities with revenues generated from an assessment on cable television companies	19

and fees were originally established in 1993 and were reauthorized in 1996, 1999, 2002, 2005, 2008 and 2011. The fees were increased to their current level in 2009.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget because it has a fiscal impact on the financial plan and without this legislation there would be a loss of approximately \$3.8 million per year in annual fee revenue.

Effective Date:

This bill takes effect immediately and will be in full force and effect on and after April 1, 2014.



Part I – Implement Open for Fishing and Hunting II by enhancing New York’s fish and wildlife program, including authorizing the use of crossbows, creating 3- and 5-year hunting, fishing and trapping licenses, reducing 7-day fishing license fees, authorizing promotional reduced license fees and 6 additional free fishing days, increasing the availability of private property for recreational activities; and authorizing distinctive license plates

Purpose:

This bill would amend the Environmental Conservation Law, the General Obligations Law (GOL), and the Vehicle and Traffic Law to enhance hunting and fishing and other outdoor opportunities, including:

- authorizing the Department of Environmental Conservation (DEC) to offer promotional reduced cost licenses up to ten days per year and to designate up to eight free sport fishing days per year;
- creating three- and five-year hunting, fishing and trapping licenses, and reducing the price of a seven-day fishing license;
- authorizing DEC to establish regulations allowing individuals to hunt big game or small game with a crossbow;
- reducing the distance from an occupied structure from 500 feet to 150 feet for discharge of a crossbow or longbow;
- allowing DEC to subcontract the production of hunting and fishing guides;
- clarifying the liability of owners, lessees and occupants whose property is used by the public for recreational activities; and eliminating or reducing initial fees for distinctive license plates issued to holders of certain sporting licenses and State Parks Empire Passes.

Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

Crossbows were previously authorized for use during the regular big game firearm hunting season but these provisions expired on December 31, 2012. Re-authorizing the use of crossbows, including during archery season, would expand outdoor recreation opportunities while also providing additional revenue to the Conservation Fund.

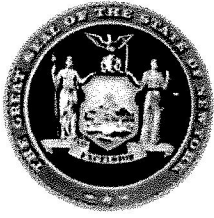
Under existing GOL provisions, owners, lessees and occupants have no duty to keep their premises safe for persons engaging in a specified list of recreational activities on their property. This bill would clarify that owners, lessees and occupants receive this protection from liability when the public uses their lands for any recreational activity. The bill also clarifies that entities and persons that develop or maintain trails or other recreational facilities for use by the public are “occupants” and receive the same liability protection. These amendments will protect landowners while at the same expand the availability of private property for recreational activities. In addition, the bill would reduce from 500 feet to 150 feet the distance a person must be from an occupied structure when discharging a crossbow or longbow. This would maintain a safe distance for engaging in the sport while making available for hunting more lands in suburban areas, which would increase hunting opportunities, and help manage locally over-abundant deer populations.

To encourage increased license sales, this bill would create three- and five-year hunting, fishing and trapping licenses, reduce the fee for resident and non-resident seven-day fishing licenses, and authorize DEC to offer reduced cost licenses for special promotions up to ten days per year and six additional free sport fishing days per year.

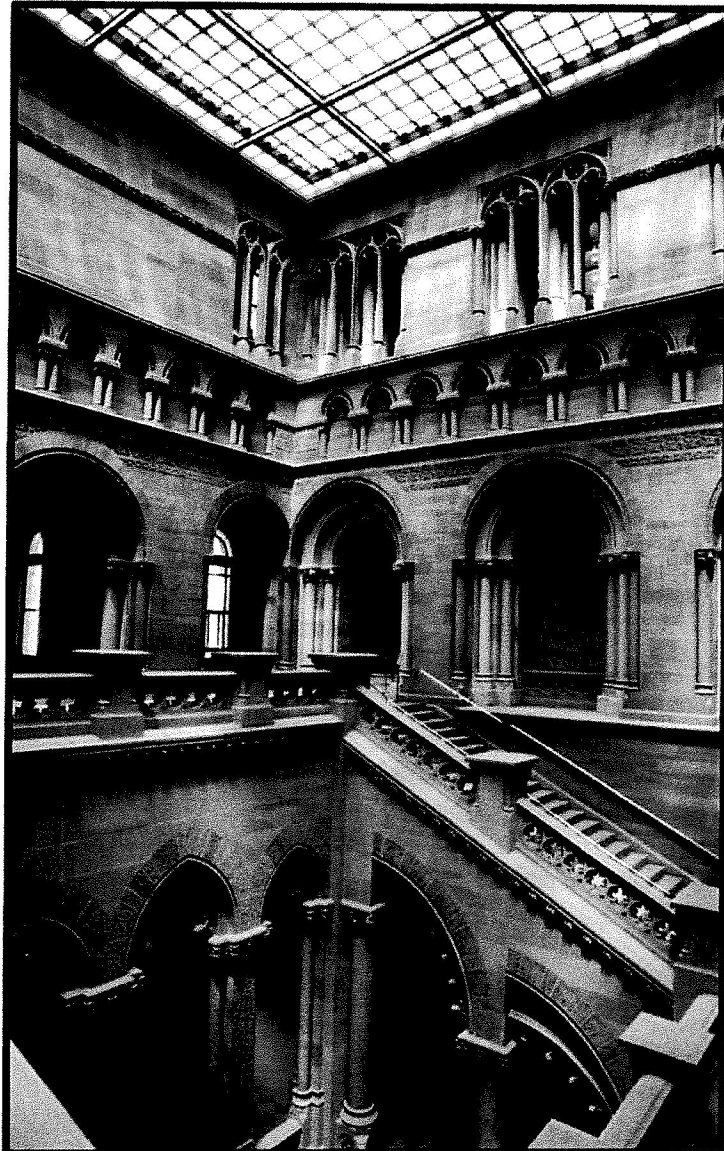
Additionally, this bill would authorize the creation of distinctive “I Love NY” license plates that would promote the sale of lifetime hunting and fishing licenses and parks vehicle access passes, also known as Empire Passports, and offer a one-time free or reduced fee distinctive plate.

Budget Implications:

Enactment of this bill is necessary to implement the 2014-15 Executive Budget because it will reduce certain hunting and fishing license fees and authorize three and five year licenses and distinctive license plates at reduced charges. Revenue losses from fee reductions are expected to be offset by increased license sales from expanded participation in hunting and fishing programs. An appropriation of \$2.5 million is included in the 2014-15 Executive Budget to protect against any unexpected revenue losses to the Conservation Fund.



New York State Senate Majority Coalition
Finance Committee / Counsel Staff
Analysis of the FY 2015 Executive Budget



Senator Dean G. Skelos
Republican Conference Leader
and Majority Coalition Leader

Senator Jeffrey D. Klein
Independent Democratic Conference Leader
and Majority Coalition Leader

Senator John A. DeFrancisco
Chairman, Finance Committee

years. The Legislature has requested a full listing of the projects and initiatives that the Executive is looking to defund.

Environmental Protection Fund

The Executive is proposing to increase appropriations for the Environment Protection Fund (EPF) by \$4 million over FY 2014 to a total of \$157 million. The Executive has requested funds for the following new initiatives:

- \$400,000 for Resiliency Planting under the Land Acquisition account. Resiliency is shore plant-life capable of lessening potential storm damages.
- \$800,000 in directed Water Quality Improvement Program funds dedicated to projects in Suffolk County. (See EPF Chart following this section.)

Major Initiatives

Recharge Superfund

Capital authorization authority of \$120 million a year for ten years expired on October 1, 2013. The Executive proposes a \$100 million, one year bonded capital re-authorization. Of these funds, \$10 million would be used to fund municipally owned remediation projects similar to the way sites were eligible under the old environmental restoration projects (ERP) funded by the \$200 million ERP allocation under the 1996 Environmental Bond Act.

Reform of the Brownfield Cleanup Program

The Executive is proposing major reform legislation in the Revenue Article VII bill that would extend the credit program, due to expire on December 31, 2015 for 10 years, but would limit eligibility and scope of the credits to more closely conform the brownfield program to the Excelsior credit program.

Please refer to the State's Environmental Remediation Programs Senate Issues in Focus section of this report for a full discussion of these two initiatives.

Article VII Legislation

The Executive is proposing to permanently extend the pesticide product registration fees and review process, which are due to expire on July 1, 2014. The fees currently raise \$8 million a year, \$5 million of which are currently deposited to the credit of the EPF.

The Executive has also introduced a bill to authorize the use of crossbows, subcontract for hunting and fishing guides, create three and five year hunting, fishing and trapping licenses, reduce seven day fishing license fees, authorize the elimination of surcharges for certain promotional motor vehicle license plates, add six additional free fishing days in the State, and tightening potential liability risks for private parties allowing the use of their property for fish and wildlife or other sporting purposes on their property. These measures are designed to be revenue neutral, thereby minimizing exposure to the Conservation Fund operating balances.

Adirondack Park Agency (APA)

The FY 2015 Executive Budget recommends \$5.1 million in All Funds appropriations for the APA, the same as FY 2014. Staffing levels for the APA are projected to remain at 54 FTE positions same as last year.

Agriculture and Markets

The FY 2015 Executive Budget recommends All Funds cash disbursements of \$103.2 million for the Department of Agriculture and Markets (NYSDAM). This represents an increase of \$2.4 million, or 2.4 percent, from the current fiscal year.

The proposal includes a new \$1.1 million appropriation for the Taste New York program.



PART I – Enact Open for Fishing and Hunting II by enhancing New York’s fish and wildlife program

- Allows for the use of crossbows for hunting in New York State, authorizes DEC to establish regulations for their use, and makes conforming changes.
- Reduces the minimum distance from an occupied structure within which a longbow or crossbow may be discharged from 500 feet to 150 feet.
- Clarifies the liability of owners, lessees and occupants whose property is used for recreational activities.
- Allows DEC to subcontract for the production of hunting and fishing pamphlets.
- Eliminates or reduces initial fees for distinctive license plates for the holders of certain sporting licenses and State Parks Empire passes for a defined period of time.
- Authorizes the Commissioner to offer for sale sporting licenses, privileges and permits at a reduced price for up to ten days per year to both resident and out-of-state hunters, trappers and anglers, and designate up to eight free sport fishing days per year.
- Creates three- and five- year hunting, fishing and trapping licenses, and reduces the price of a seven-day fishing license.

PART J – Permit the Department of Agriculture and Markets to deny renewal of food processing licenses to establishments that have outstanding penalties

- Authorizes the Department of Agriculture and Markets (Ag & Markets) to withhold the renewal of a food processing license to establishments that have outstanding penalties and/or judgments equal to or exceeding \$2,400. Ag & Markets may, in its discretion, grant a provisional license good for sixty days to allow payment of the outstanding penalties and/or judgments without interruption of operation of the establishment.

PART K – Authorize the New York State Energy Research Development Authority (NYSERDA) to finance a portion of its research, development and demonstration, and policy and planning programs, and to finance the DEC’s climate change program, from an assessment on gas and electric corporations.

- Authorizes NYSERDA to finance a portion of its research, development and demonstration, and policy and planning programs, and to finance the DEC’s climate change program, from an assessment on gas and electric corporations collected pursuant to section 18-a of the Public Service Law.



January 2014

New York State Assembly Ways and Means Committee

YELLOW BOOK

Review and Analysis of the 2014-15 Executive Budget

STATE OF NEW YORK

Sheldon Silver, Speaker
Herman D. Farrell, Jr., Chairman

Fiscal Year April 1, 2014 to March 31, 2015



municipally owned brownfields through the Environmental Restoration Program. It also extends the Brownfields program for 10 years and modifies the Brownfields Cleanup tax credit program.

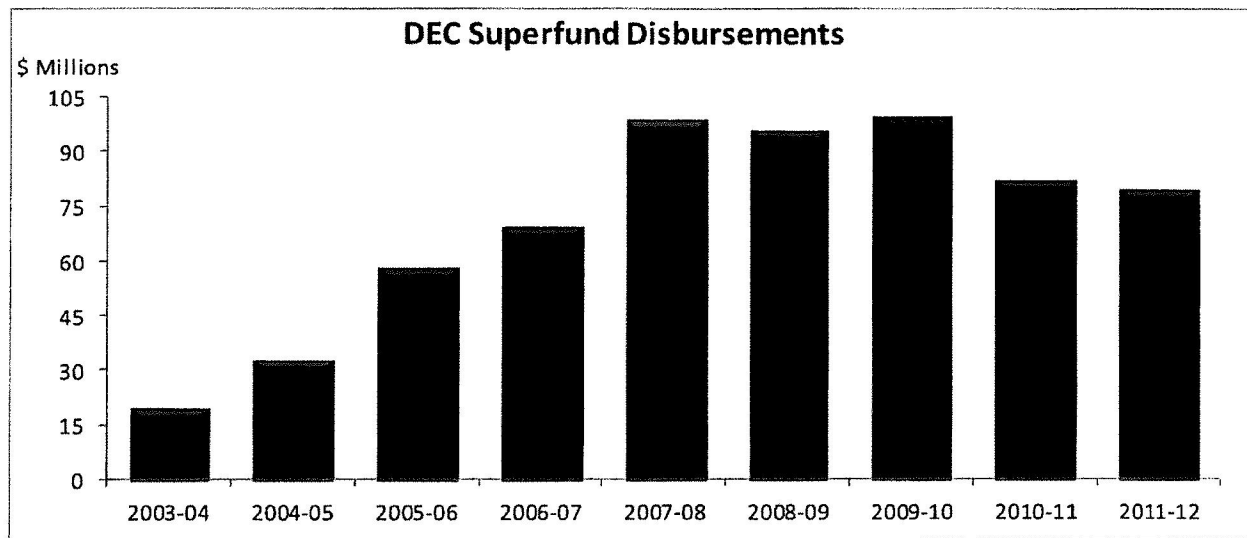


Figure 6

Environmental Protection Fund (EPF): The Executive Budget proposes \$157 million for the EPF, an increase of \$4 million from 2013-14. Appropriations include \$14 million for solid waste programs, \$58 million for parks and recreation, and \$85 million for open space programs.



Adventure License: The Executive Budget proposes a \$2.5 million appropriation for a New York Adventure License, which would provide for optional icons denoting all of an individual's lifetime Hunting and Fishing license designations on their driver's license. Additionally, the proposal creates a 7-day fishing license, as well as 3- and 5-year hunting and fishing licenses and includes an increase in the number of promotional hunting and fishing days. The Executive also proposes to authorize the use of crossbows and would allow DEC to subcontract the printing of hunting and fishing guides.

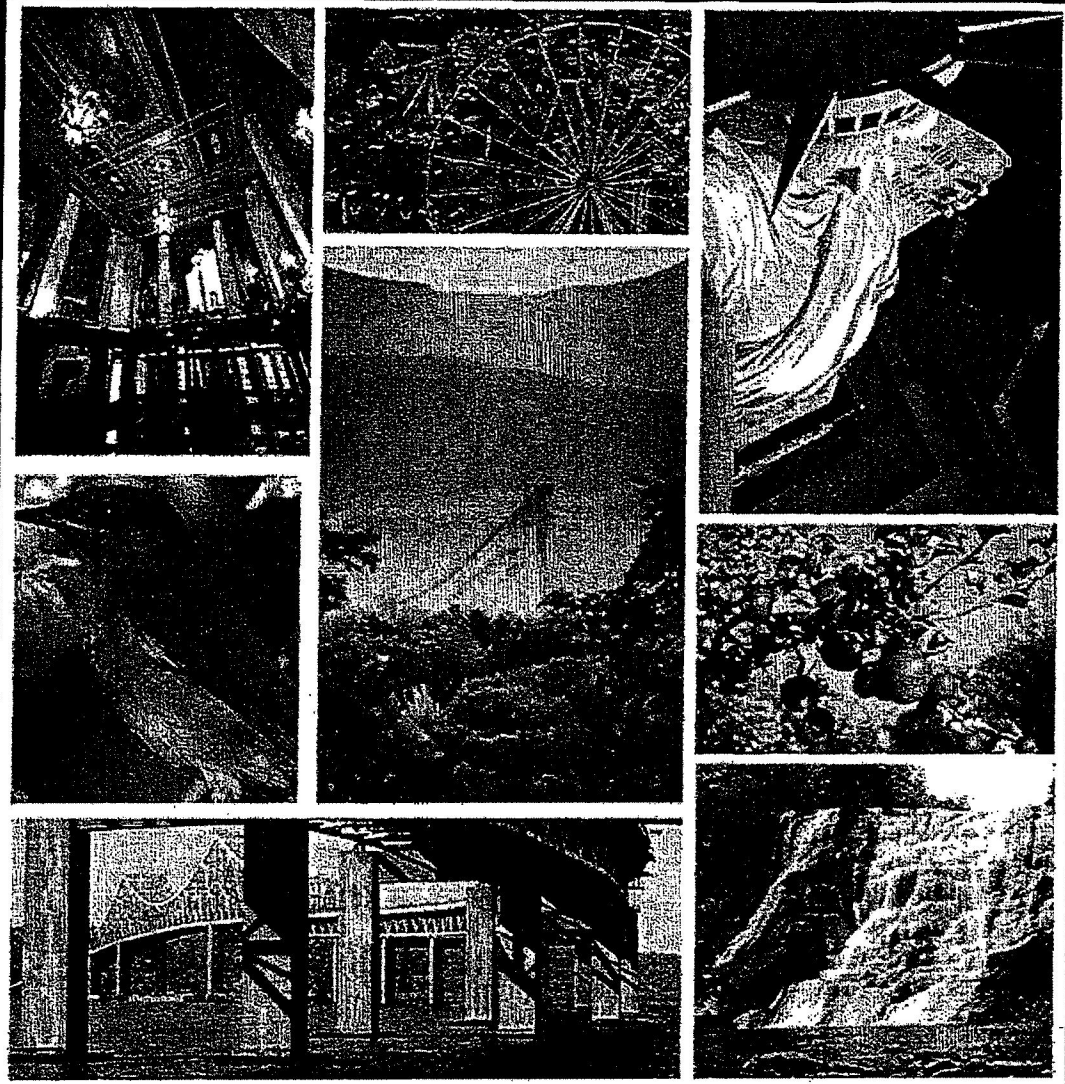
E-Licensing: The Executive proposes to use \$1.1 million from the Conservation Fund for continued implementation of an e-licensing system.

Other Programs: The Executive proposes to eliminate funding for the Cornell Research Station at Shackleton Point (\$78,000), Cornell Community Integrated Pest Management (\$500,000) and Invasive Species and Water Dredging (\$350,000).



New York State Finance Democratic Conference

Staff Analysis of the 2014-15 Executive Budget



Senator Andrea Stewart-Cousins
Democratic Conference Leader

Senator Liz Krueger
Ranking Member, Senate Finance Committee

Louie J. Tobias, Secretary/Director of Finance

Open Space	Enacted 2013-14	Executive Recommendation 2014-15	\$ Change	% Change
Land Acquisition	\$20,000,000	\$20,150,000	\$150,000	.75%
Land Trust Alliance	\$1,575,000	\$2,000,000	\$425,000	26.98%
Urban Forestry	\$500,000	\$1,000,000	\$500,000	50%
Resiliency Planting Program	0	\$250,000	\$0	-
Smart Growth	\$400,000	\$400,000	\$0	0%
Farmland Protection	\$13,000,000	\$14,000,000	\$1,000,000	7.69%
Agricultural Waste Management	\$1,000,000	\$1,500,000	\$500,000	50%
Biodiversity Stewardship	\$500,000	\$500,000	\$0	0%
Albany Pine Bush Commission	\$2,000,000	\$2,000,000	\$0	0%
Invasive Species	\$4,600,000	\$4,600,000	\$0	0%
Lake George	\$100,000	\$450,000	\$350,000	350%
LI Pine Barrens Commission	\$1,100,000	\$1,100,000	\$0	0%
Oceans & Great Lakes Initiative	\$4,750,000	\$4,800,000	\$50,000	1.05%
Water Quality Improvement Program	\$6,945,000	\$6,800,000	(\$145,000)	-2.09%
Suffolk County	\$0	\$2,000,000	\$2,000,000	-
LI South Shore Estuary Reserve	\$900,000	\$900,000	\$0	0%
Non-Point Source Poll Cont	\$18,700,000	\$18,700,000	\$0	0%
Agricultural	\$14,200,000	\$14,200,000	\$0	0%
Non-Agricultural	\$4,500,000	\$4,500,000	\$0	0%
Soil and Water Conservation Districts	\$3,500,000	\$4,500,000	\$1,000,000	28.57%
Finger Lake - Lake Ontario Watershed	\$1,300,000	\$1,300,000	\$0	0%
Hudson River Estuary Plan	\$3,800,000	\$3,800,000	\$0	0%
Mohawk River	\$800,000	\$800,000	\$0	0%
Open Space Total:	\$82,495,000	\$85,050,000	\$2,535,000	3.07%
Total EPF:	\$153,000,000	\$157,000,000	\$4,000,000	2.61%

Article VII

- Permanently Extend Pesticide Product Registration Fees:** This bill permanently extends pesticide registration fees that sunset on July 1, 2014 and generates \$8 million in annual revenue for the State including \$5 million for the EPF. This bill also makes permanent current agency review timeframes and amends reporting requirements to provide county level data of pesticide sales which are to be posted on DEC's website.
- Promote New York State Fishing and Hunting:** This bill promotes outdoor recreation by re-authorizing crossbow hunting in the state, creating three and five year sporting licenses at reduced fees, offering up to ten promotionally priced licenses, increasing free fishing days from two to eight, and reducing the price of seven day fishing licenses. This bill also clarifies the liability of owners who allow the public to recreate on their property and reduces the setback from an occupied structure for the discharge of a bow or crossbow from 500 to 150 feet. Additionally, this bill authorizes DEC to subcontract the production of hunting and

fishing guides and creates distinctive license plates for lifetime sporting license holders and holders of long term parks vehicle access passes.

- **Extend and Reform the Brownfield Redevelopment Program:** This bill extends the Brownfield Redevelopment Program for ten years until 2025 and makes a number of reforms to program structure and eligibility criteria. The proposed reforms to the program include:
 - Extend the Program for ten years until Dec. 31st, 2025
 - Separate eligibility for the remediation program from eligibility for redevelopment tax credits
 - Establish criteria for projects eligible for redevelopment tax credits that include: property that has been abandoned for 15 years; property that has been abandoned and tax delinquent for 10 years; property value in relation to remediation costs is upside down; the project is a priority economic development project as determined by Empire State Development (industry and job creation requirements)
 - Provide increases to the redevelopment tax credit for projects that: are located in a high poverty high unemployment area; conform to Brownfield Opportunity Area planning; build affordable housing units
 - Create a fast track program to expedite projects that forego tax credits
 - Impose performance timelines for projects that lag or sit idle in the program
 - Allow Class II superfund sites that are not responsible parties to enter the program
 - Specify clean up costs that may be claimed under the remediation tax credit
 - Allow DEC to directly undertake municipal environmental restoration projects
 - Waive certain hazardous waste generation fee

to maintain federal support for similar funding. We look forward to working with the Legislature and Governor to develop new strategies to address this significant need for water infrastructure investments in the year to come.

→ **NY Open for Hunting and Fishing – Support Crossbows and limiting landowner liability**

Part I of the TED article VII

Another important conservation issue that we look forward to working with you on this session is improving management of the state's white-tailed deer herd. Overabundant deer are a serious threat to the health of New York's ecosystems, especially our forests and the birds that depend on them. We greatly appreciate the Governor's attention to promoting increased hunting opportunities which is an important step toward providing better deer management.

In addition, we strongly support Part I of the Transportation, Economic Development and Environmental Conservation (TED) Article VII bill which authorizes the DEC to regulate the use of crossbows for hunting, providing another tool to ensure better deer management. We also support the other legislative changes proposed in this section which would decrease the distance from a dwelling one can fire a crossbow or bow to 150', and limit the liability for landowners who wish to open up their properties for public recreation. We strongly urge the legislature to support these proposals to ensure the state is aggressively taking steps to address the threats posed by overabundant deer.

While we are supportive of the Governor's push to promote hunting and fishing opportunities and enhance access to the outdoors, to maximize the state's return on the investments we urge the Legislature to work with Governor Cuomo to develop an initiative to promote the state's current voluntary conservation funding mechanisms. These mechanisms, including the Habitat Access Stamp, Bluebird Open Space Conservation License Plates, and the Return a Gift to Wildlife Program provide important conservation revenues to the state, yet are currently under promoted missing opportunities to leverage greater funds for environmental protection efforts.

Invest in Environmental Agencies Budgets and Staff

If our environmental Agencies are to be successful in achieving the program goals identified in the Governor's budget and state of the state address, they will need greater resources. Past budget cuts have left State Agencies struggling to meet their statutory mandates to protect our environment, and the Governor's proposed budget maintains these low staffing levels. We look forward to working with the Governor and Legislature on a long term strategy to reinvest in these agencies, and ensure they have the necessary resources and staff to appropriately conserve, protect, and enhance our natural resources.

Onondaga Lake Communities Revitalization

Outside of specific funding for the environment, we appreciate the Governor's focus on revitalizing Onondaga Lake. This Lake has been identified as an Important Bird Area as it provides critical habitat for migrating waterfowl. Recently, we have been working closely with Honeywell and other community partners to prioritize conservation and education activities around this unique area. The newly proposed \$30 million investment to support economic development and infrastructure improvements that encourage the revitalization of Onondaga Lake and its surrounding communities could help enhance our conservation efforts. We look forward to working with the Governor and Legislature to ensure this funding also incentivizes habitat improvements around the Lake.



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Testimony of Sean Mahar
Director of Government Relations, Audubon New York
Before the Joint Legislative Hearings on the New York State Budget
January 29, 2014

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Mr. Chairmen, and other distinguished members of the Senate and Assembly, thank you for allowing me the opportunity to offer the following testimony on Governor Andrew Cuomo's Fiscal Year 2014-2015 Executive Budget proposal. My name is Sean Mahar and I am the Director of Government Relations for Audubon New York, the State program of the National Audubon Society representing 27 local Chapters and 50,000 members across the state. Our mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity.

In 2011, the National Audubon Society adopted a new strategic plan, *A Roadmap for Hemispheric Conservation 2012-2015*, to effectively address the unprecedented environmental challenges we face. The plan, which identifies and coordinates our conservation programs and activities, is structured along the four major migratory bird flyways of North America and organized according to five complementary conservation strategies. In the Atlantic Flyway, our objective is to advance critical policies that are needed to protect our most threatened bird species and the habitats they depend on in New York State by focusing on putting working lands to work for birds & people, sharing our seas & shores, saving Important Bird Areas, shaping a healthy climate & clean energy future, and creating bird-friendly communities.

We believe that where birds thrive, people thrive, and increased conservation funding is central to both, the success of Audubon's strategies as well as the success and sustainability of New York State. Investing adequately in natural resource protection will not only help sustain populations of birds and other wildlife, but will retain and improve the quality of life and ecosystem services that benefit all New Yorkers.

Last year, as we celebrated the twentieth anniversary of the Environmental Protection Fund (EPF) with you and your colleagues, we greatly appreciated that the final State Budget increased funding for the EPF for the first time since the economic downturn and maintained New York Works investments in the Office of Parks, Recreation and Historic Preservation (State Parks) and Department of Environmental Conservation (DEC) infrastructure. These investments, combined with the successful passage of legislation to rid Eurasian Boar from New York State, have greatly helped to protect and restore our natural resources for birds, other wildlife, and the state's continued economic recovery.

This year, it's clear that New York State is continuing to turn the economic corner, and we welcome that the Governor has proposed the first budget surplus since the economic downturn. While we are supportive of many of the initiatives outlined in Governor's Executive Budget proposal which we will discuss in this testimony, on the whole we strongly believe that the proposed levels of funding for the environment should be increased to fulfill the critical needs that exist across the State for programs to protect our environment and natural resources



Addendum: Additional Testimony by The Nature Conservancy in New York

Legalization of crossbows and amendments to General Obligations Law TED Article VII Part I

The Executive Budget proposal includes legislation that will legalize the use of crossbows for hunting in New York and amend the General Obligations Law to clarify laws regarding liability for private landowners, including The Nature Conservancy, who choose to open their lands for recreational access and public benefit. The Nature Conservancy supports both of these proposals. The recreational access liability changes will complement the DEC Public Access Initiative, also proposed in the budget, which will open hundreds of thousands of acres of state owned lands and waters to the public for a variety of recreational uses. We are particularly supportive of the inclusion of swimming in the proposed language, along with other forms of recreation.

The legalization of crossbows in New York will provide the state and hunters with another tool to manage wildlife populations and pursue recreational opportunities. The Nature Conservancy is especially concerned with deer populations across New York, from Long Island to the Allegheny forest, which are currently not being managed to protect our forest's health, and causing serious economic risks due to the impacts of overbrowsing.

A 2010 study on forest regeneration in New York by scientists at The Nature Conservancy* found that "the impacts of deer herbivory on forest regeneration in New York have been documented from the Adirondack to the Allegheny forests. Sustained overbrowse by deer is known to reduce forest regeneration and diversity, shift species composition, and have cascading effects on plant and wildlife communities particularly wildflowers and forest bird species."

The same study found that there is evidence for concern over the status of forest regeneration in New York State. Nearly one-third of the state may not have sufficient regeneration to replace the forest canopy after a significant overstory disturbance. When considering only commercially desirable timber species, nearly half of New York State had insufficient regeneration. These regeneration issues appear to be the worst in the Southeastern portion of the state, but exist in every region.

Research showed that at The Nature Conservancy's Mashomack Preserve on Shelter Island, forest regeneration increased from 2000 to 2005 following an increase in deer hunting. In the Hudson Valley, seedlings and saplings were shown to be significantly more abundant within deer exclosures and managed areas than in the surrounding forest. The study also corroborated a 2010 survey of practicing foresters in New York that reported a regeneration success rate of only 30%, with the greatest problems in the Lower Hudson, Capital District, and Great Lakes regions, mostly attributed to deer herbivory.

Deer populations throughout New York must be better managed for forest health, in order to protect economically important industries including forestry and tourism. Legalizing crossbows provides the state another tool to use as we work to achieve this important goal. We urge the Legislature to support this legislation as part of this year's state budget.

*Full report available online at:

<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/newyork/placesweprotect/easternnewyork/final-nys-regen-091410-2.pdf>

More information about New York's forest regeneration at nature.org/nyforests.



New York State Conservation Council Inc.
8 East Main Street, Ilion, New York 13357-1899

January 29th, 2014 New York State Senate and Assembly
Joint Budget Proposal Hearing on
Department of Environmental Conservation Funding

For over 80 years, the New York State Conservation Council, Inc. has been a leader in advocating the wise use and management of New York's valuable natural resources to ensure that they are protected for our children's children. The Council supports the sound management principles of New York's fish and wildlife and their natural habitats. We believe in Conservation, which we see as the wise use of our renewable natural resources.

The New York State Conservation Council, represent over 300,000 sportsmen and outdoor enthusiast throughout New York State. While we are not alone in representing the sportsmen, we are one of the largest if not the largest sportsmen advocate groups in New York. We also believe our points of view go well beyond our membership and represent the vast majority of all sportsmen and outdoor enthusiasts in New York State.

The Governor in his State of the State Message mentioned that there is a 8.2 billion dollar economic impact to New York from hunting, fishing and trapping. We are pleased that he governor realizes that there is this 8.2 billion impact. It shows that we and what we accomplish through hunting, fishing and trapping deserves the support of the state and what is being offered in this year's budget. This amount shows that there is a positive feedback from investments made by the state. We as tax payers get a great return on the states (our) investment in the NYS DEC.

The Environmental Conservation portion of the budget is vast. I would like to comment on six items concerning conservation. These items have long been on the bucket list of many a concerned sportsmen and sportsmen group.

1. **The DEC, Department of Environmental Conservation** deserves full funding as proposed by the Governor's budget. In fact we would like to see more. Through the sportsmen's license fees and resulting matching funding we do much to support the efforts of wise conservation. The economic impact of money budgeted to the DEC gives a positive return. To fully realize this positive impact we need to support the infrastructure within DEC. This infrastructure includes the proper staffing necessary for them to do the best job possible.
2. **The State Fish Hatcheries Repairs**, the \$7.5 million listed in the Governor's Capitol Plan under reapportionments is not an unrealistic number - it is a needed number for normal maintenance to keep our hatcheries functional for now and the future. (A long time concern of the Sportsmen.)



3. **The Crossbow**, needs to be recognized as a legal hunting implement, and the Governor promoting that the NYS DEC should determine how it will be used is long overdue. The ability to use the crossbow for hunting has had the support of the majority of our sportsmen.
4. **The 500ft To 150 Ft Shooting Distance Reduction for Archers from Structures**, is another logical proposal. It offers adequate safety and increased opportunity to manage and harvest wildlife.
5. **Fifty Proposed Access projects**, access is a key element for sportsmen to be able to hunt, fish, and trap. More access leads to more license sales, which translates more money to be used for conservation and wise resource management.
6. **Liability relief for Landowners**, would open up more opportunities for the sportsmen to hunt, fish, and trap. The opportunity for land owner to manage his lands soundly without subjecting themselves to undue legal liabilities. While New York State is well recognized nationally for the opportunity to hunt fish and trap and its availability of quality public lands, the availability to hunt private lands offers additional opportunity for quality hunting and fishing.

We the Council, appreciate the support the State Senate and the State Assembly has offered over the years. I hope that the legislative members at this hearing today can convince their colleagues to support all of the Environmental Conservation funding and legislative initiatives presented under Governor's 2014 State Budget.

Respectfully submitted,

A Charles Parker
President, New York State Conservation Council

See addendum;



STATE OF NEW YORK CONSERVATION FUND ADVISORY BOARD
625 Broadway, Albany, NY 12233-4800

January 29, 2014 Joint Legislative Public Hearing on 2014-2015 Executive Budget
"Environmental Conservation"

Testimony Given by David Corr, NYS Conservation Fund Advisory Board

On behalf of the Conservation Fund Advisory Board, New York State Conservation Council, and Fish and Wildlife Management Board, I would like to thank the Committee for the opportunity to provide testimony today on the budget.

The Conservation Fund is unlike any other special revenue fund in the State. The purpose of the Conservation Fund is "the care, management, protection and enlargement of the fish, game and shell fish resources of the state and for the promotion of public fishing and shooting" (NY Finance Law § 83). It is funded by the sales of hunting, trapping, and fishing licenses. The members of CFAB are from the very community that provides the revenue deposited into the fund.

The New York State Fish and Wildlife Management Board also serves in an advisory capacity to NYSDEC. Its members are the local sportspersons, landowners, and county legislatures from regional boards. In addition, numerous state agencies are represented in non-voting positions on the Board, including NYSDEC, Ag and Markets, Transportation, SHPO, Cornell College, among others. The purpose of the Fish and Wildlife Management Board is to "approve or disapprove the fish and wildlife management practices formulated by the regional boards" as well as recommend "uniform fish and wildlife management practices for similar ecological types within the various ecological regions of the state."

Our organizations have a common aim – to advise the State on practices and issues that affect sportspersons and landowners who harvest wildlife, are a primary segment of users of State owned land, and who are the most knowledgeable on these issues from our direct experience in the outdoors. You recognized the need for this expertise in passing laws to create our board and commissions.

Staffing Levels within the Division of Fish, Wildlife, and Marine Resources

We remain concerned with the number of staff that are now solely supported by the Conservation Fund. For instance, 31 additional environmental conservation officers have been added to the Conservation Fund line. Many of these enforcement office positions and duties have little to no involvement with game species or promotion of public fishing and shooting. Rather, their duties in larger metropolitan areas have no relation to the purposes of the Conservation Fund and have no impact on the license holders whose fees are supporting their position. In fact, since 2009 the Conservation Fund is supporting more and more staff, approaching now 350 people, yet programs and staff to work with game species, be it coyote or grouse or any others, are lacking. The shifting of staff is often at odds with Department of Environmental Conservation 5 year plans on staffing levels that would be supported by the Conservation Fund.

Our organizations recognize the budget restrictions that all agencies in our State are facing. You are the ones who are the most familiar with these fiscal realities. Our organizations continue to work closely with

NYSDEC and the Governor's Office on these times. We have also been open to creative solutions. When the number of license sales decreased and the Conservation Fund balance stabilized - we supported the Governor's plan to reduce license fees to spur sales and tourism.

However, our support for current license fee levels remains grounded in the understanding that hunting, fishing and trapping license fees do not go to the general fund but rather remain dedicated in the Conservation Fund for specific purposes. As we have in the past, we again request that the Conservation Fund only be used to support staff positions that are in line with the purposes of the fund, namely "the care, management, protection and enlargement of the fish, game and shell fish resources of the state and for the promotion of public fishing and shooting".

Budget Allocations

Secondly, our organizations remain concerned with the differences between the appropriated amounts approved by the legislature and the lower amounts that are ultimately allocated by the Division of Budget. These differences, as well as slowness of making such allocations, are directly impacting the fish and wildlife of our State. A simple delay in approving a budget allocation can result in a one year delay in program rollout. For instance, Cayuga Lake has a sea lamprey problem. For those who aren't aware, lamprey are a type of invasive species. They have no enemies and feed off of fish, especially trout in freshwater lakes. The trick to control of the population is yearly treatment. If a year is missed, you have a whole generation of lamprey that will be able to spawn, allowing the lamprey to continue to spawn and feed. Although funding for sea lamprey control has been authorized in the State budget, actual allocation of the funds has not occurred, and therefore Cayuga Lake has not received lamprey treatment. This is directly due to lack of funding and staff at NYSDEC. Sea lamprey continue to have a noticeable impact on trout in Cayuga Lake. Invasive species simply do not wait for budget allocations. Our organizations request that Division of Budget recognize that funds approved by you for these programs should be allocated and available as soon as possible.

Other Priorities:

To provide access for all New Yorkers to NYS lands while maintaining current roadways and access. Provide access and support for the full funding to reopen some of the sixty currently closed or partially closed roads on State lands to include funding for access to historic fire towers. Current DEC operational staffing and funding levels have not kept pace with many maintenance issues such as culvert and bridge replacements. This is despite the assistance from local government in many areas. This situation has been further aggravated by the recent cycle of storms. Future land acquisitions must have viable plans for ongoing maintenance while addressing the concerns of local government and the local economies that are affected.

Further, we are asking that the legislature insure that budgetary language insure that the Conservation Fund be protected so as to insure current and future assets and continued funding thru Federal Funding sources such as Pittman-Robertson.

→ Support for Current Legislation

Our organizations also want to express our support for other initiatives from the Governor's Budget. Deferred maintenance at fish hatcheries is proposed to be addressed with \$4 million from NY Works. Public access points would now be funded with an additional \$6 million.

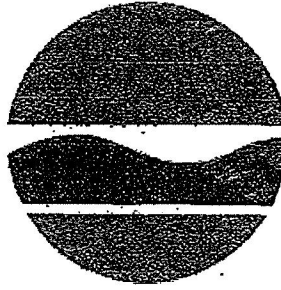
In addition, the proposed budget, which would allow for safe crossbow hunting and reduced setbacks for bow hunting, is appreciated. In more suburban areas, deer control is simply not possible with traditional firearms.

Bow and crossbow hunting provide effective alternatives to rifles for deer control and realistic setbacks for bow and crossbow hunting make even more of an option. Lastly, the Executive Budget provides for legal protection for property owners/lessees or occupants who allow their property to be used for public recreation uses.

I can recall no other Governor in recent memory who has so vigorously supported and personally participated in the outdoor activities that New York State has to offer.

Closing

Lastly, I want to thank you for your time today. Our organizations remains committed to working with you and the Governor on behalf of all of the Sportsmen and Women of New York.



**Testimony of
Joe Martens
Commissioner
New York State Department of Environmental Conservation**

**New York State Legislature
Senate Standing Committee on Finance
Assembly Standing Committee on Ways and Means
Hearing:**

**The 2014-15 Executive Budget Recommendations for the
Department of Environmental Conservation**

January 29, 2013

Chairman DeFrancisco, Chairman Farrell, Senator Grisanti, Assemblyman Sweeney, members of the legislative fiscal and environmental conservation committees, thank you for this opportunity to discuss Governor Cuomo's Executive Budget as it pertains to the Department of Environmental Conservation (DEC) for State Fiscal Year 2014-15. Under the Governor's leadership, DEC is working to make New York more business-friendly, more resilient and prepared for emergencies, more welcoming to outdoor recreation and tourism, and even more protective of our valuable natural environment. We have made good progress, and I appreciate the support I have received from the Legislature and many of you individually. We have a list of accomplishments, ranging from one of the largest land conservation and public access projects in the State's history—the Finch Pruyn purchase in the Adirondacks—and two historic Constitutional Amendments; to streamlined permitting for key economic development projects and innovative voluntary programs like DEC's new environmental audit policy.

Climate: Extreme weather is a source of significant concern, and DEC, working with NYSERDA and others, is aggressively pursuing policies to reduce emissions that cause climate change. Last year, working with our partner states, Governor Cuomo called for a lower cap on greenhouse gas emissions and inspired a nine-state agreement to reduce the cap by 45% this year, increasing to more than 50% by 2020. We project that New York's investment of Regional Greenhouse Gas Initiative auction proceeds through 2020 will yield an estimated \$5.8 billion benefit to New York's economy, create nearly 3,000 new jobs, and reduce consumer energy bills.

→ **New York Open for Fishing and Hunting:** Outdoor sporting activities generate over \$9 billion in economic activity in New York. In 2013, the Governor launched NY Open for Fishing and Hunting, an initiative to improve recreational activities for sportsmen and sportswomen and boost tourism opportunities throughout the State. The initiative reduced fees for most sporting licenses and simplified the number and types of licenses available.

In addition to the Adventure License announced in the State of the State, the Executive Budget builds on last year's NY Open for Fishing and Hunting by proposing promotional license sales

days, up to eight free fishing days, and three- and five-year licenses at discounted prices, as well as reducing the cost of seven-day fishing licenses and authorizing DEC to promulgate regulations allowing the use of crossbows for hunting. We expect this initiative to increase participation in fishing and hunting and make New York even more attractive as an outdoor sports destination.

Invasive Species: Invasive species are a challenge, negatively affecting both our economy and environment. Working with the Department of Agriculture and Markets, we have proposed regulations that identify invasive species that may significantly harm native flora and fauna, and prohibit or regulate their sale. DEC is also working on a statewide aquatic invasive species plan to further mitigate the impact of this serious problem, and recently proposed regulations that would require the removal of visible plants and animals from boats and trailers before launching them at DEC facilities. And, DEC's new prohibitions on selling or possessing Eurasian boar will curtail their destructive impacts.

NY Works: Working with the Legislature, we have made a significant investment through the NY Works program in critical environmental infrastructure projects. The coastal, dam, and flood control investments are mitigating the risks posed by the forces of nature, while putting New Yorkers to work. Last year, NY Works II allowed us to invest in improvements to recreational facilities, cleanup of municipal brownfields, and upgrades to wastewater treatment systems. This year, the Executive Budget proposes \$40 million in NY Works III for DEC. We plan to use these funds to invest \$6 million for 50 new public access projects and \$4 million for fish hatcheries announced by the Governor. Funds will be used for repairs and improvements to existing DEC facilities, including campgrounds, education centers, dams, and a shellfish lab on Long Island. Funds will also be dedicated to plugging orphaned oil and gas wells, replacing air monitoring equipment, and investing in IT for the next phase of DEC's eBusiness Strategy.

Sandy Response: It has been over a year since Superstorm Sandy, but we continue to work on recovery and rebuilding in keeping with the recommendations of the 2100 Commission. In partnership with the Army Corps, DEC is working on large-scale projects to repair and build coastal protection projects. DEC will continue to be thoroughly involved in all aspects of these

BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

JOINT LEGISLATIVE HEARING

In the Matter of the
2014-2015 EXECUTIVE BUDGET ON
ENVIRONMENTAL CONSERVATION

Hearing Room B
Legislative Office Building
Albany, New York

January 29, 2014
10:01 a.m.

PRESIDING:

Senator John A. DeFrancisco
Chair, Senate Finance Committee

Assemblyman Herman D. Farrell, Jr.
Chair, Assembly Ways & Means Committee

PRESENT:

Senator Liz Krueger
Senate Finance Committee (RM)

Assemblyman Robert Oaks
Assembly Ways & Means Committee (RM)

Senator Mark J. Grisanti
Chair, Senate Committee on
Environmental Conservation

Assemblyman Robert K. Sweeney
Chair, Assembly Committee on
Environmental Conservation

Senator Patricia A. Ritchie
Chair, Senate Committee on Agriculture

1 nine-state agreement to reduce the cap by
2 45 percent this year, increasing to more than
3 50 percent by 2020. We project that
4 New York's investment in the Regional
5 Greenhouse Gas Initiative auction proceeds
6 through 2020 will yield an estimated
7 \$5.8 billion benefit to New York's economy,
8 create nearly 3,000 new jobs, and reduce
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→ 10 Outdoor sporting activities generate
11 over \$9 billion in economic activity in
12 New York. In 2013, the Governor launched
13 New York Open for Fishing and Hunting, an
14 initiative to improve recreational activities
15 for sportsmen and sportswomen and to boost
16 tourism opportunities throughout the state.
17 The initiative reduced fees for most sporting
18 licenses and simplified the number and types
19 of licenses available.

20 In addition to the Adventure License,
21 which the Governor announced in his State of
22 the State, the Executive Budget builds on
23 New York Open for Fishing and Hunting by
24 proposing promotional license sale days, up

2014-2015 Executive Budget
Environmental Conservation
1-29-14

PRESENT: (Continued)

Assemblyman William Magee
Chair, Assembly Agriculture Committee

Senator Catharine M. Young

Assemblyman Carl E. Heastie

Senator Malcolm Smith

Assemblywoman Patricia Fahy

Assemblywoman Ellen C. Jaffee

Assemblywoman Barbara S. Lifton

Assemblyman Clifford Crouch

Assemblyman Michael J. Cusick

Senator Cecilia Tkaczyk

Assemblywoman Deborah J. Glick

Assemblyman Dan Stec

Senator Philip M. Boyle

Assemblywoman Aileen M. Gunther

Assemblyman Steve Englebright

Assemblywoman Donna A. Lupardo

Assemblywoman Vivian E. Cook

Assemblyman Joseph D. Morelle

Assemblyman Peter D. Lopez

Assemblyman Steven Otis

2014-2015 Executive Budget
 Environmental Conservation
 1-29-14

PRESENT: (Continued)

Assemblyman Thomas J. Abinanti

Assemblyman Raymond W. Walter

Assemblywoman Earlene Hooper

Assemblyman N. Nick Perry

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1 to eight free fishing days, and three- and
2 five-year licenses at discounted prices as
3 well as reducing the cost of seven-day
4 fishing licenses and authorizing DEC to
5 promulgate regulations allowing the use of
6 crossbows for hunting. We expect this
7 initiative to increase participation in
8 fishing and hunting and make New York even
9 more attractive as an outdoor sports
10 destination. **END**

11 Invasive species are a huge challenge
12 negatively affecting both our economy and the
13 environment. Working with the Department of
14 Ag & Markets, we have proposed regulations
15 that identify if it's a species that may
16 significantly harm native flora and fauna and
17 prohibit or regulate their sale. DEC is
18 working on a statewide Aquatic Invasive
19 Species Plan to further mitigate the impact
20 of this serious problem, and recently
21 proposed regulations that would require the
22 removal of visible plants and animals from
23 boats and trailers before launching them at
24 DEC facilities. And DEC's new prohibitions

1 Governor is proposing, could that funding be
2 used to make sure that these stream gauges
3 are fully active?

4 COMMISSIONER MARTENS: The weather
5 detection system does not provide funds
6 specifically for stream gauges. We do have
7 funds as part of the NY-Works III program
8 that I mentioned to support the stream gauge
9 program in New York.

10 We are fairly selective because DEC
11 operates 106 flood-control devices. Certain
12 weather gauges are very important to us for
13 the operation of those systems. Then, you
14 know, there has been decreasing federal
15 support for stream gauges, and that's a
16 concern of ours as well.

→ 17 ASSEMBLYMAN CROUCH: Also, just as a
18 comment, I do agree with the Governor's
19 proposal to reinstate the crossbow hunting.
20 I have been approached by a number of my
21 constituents that have spent \$1500 in getting
22 equipped when it was legal, and now they
23 can't use their equipment for crossbow.

24 Along with some handicapped

1 individuals that the adaptation devices for
2 regular compound bows just don't seem to work
3 for them. Especially if they're paralyzed
4 from the waist down, being able to control
5 themselves while they're drawing a bow just
6 doesn't work. So they've been a strong
7 advocate of renewing the crossbow licenses.

8 So I just want to put in a plug for
9 that, that I think it's a good thing. END

10 And one of the questions I typically
11 ask every year is dealing with foresters,
12 marking trees for market on state lands. I
13 know you've done some improvements in the
14 last couple of years, and I just want to make
15 sure we're still on track. Especially with
16 the invasive pests destroying some of our
17 forests, I think it's imperative that we stay
18 on top of it, mark the trees, get them to
19 market before they're destroyed, just as a
20 general practice of good forest management.

21 And can you comment on where we are
22 with foresters? Have we been able to
23 increase over the last year or increase the
24 marketing of our timbers?

1 those are not your decisions to make these
2 land purchases, they come at a higher level.

3 But moving forward, you know, the
4 idea that we need to make sure that we've
5 taken care of the land we currently own
6 before we volunteer to purchase more land.
7 Everyone wants to buy land, but we need to be
8 stewards of what we've already taken on. So
9 that's my perspective.

10 COMMISSIONER MARTENS: Appreciate it.
11 Got it.

12 ASSEMBLYMAN STEC: Thank you.

13 CHAIRMAN FARRELL: Thank you.

14 CHAIRMAN DeFRANCISCO: Senator
15 Krueger.

16 SENATOR KRUEGER: DEC certainly has a
17 diverse set of responsibilities. I noted in
18 the Article 7 bill relating to outdoor
19 sports -- and please understand, my views of
20 hunting often tie into my concerns about
21 child welfare, so I'm famously known as
22 Senator No Fun in the Senate when I argue
23 there are child-welfare issues involved with
24 young people and hunting.

1 So in this Article 7 bill it allows
2 crossbows to be used within 150 feet of
3 structures and homes when the current law is
4 500 feet. Now it would be treating crossbows
5 the same way as longbows, as opposed to guns.
6 And frankly I'm very concerned that
7 crossbows are a very powerful hunting item
8 and can be shot with enormous power and go a
9 very long way. Are you not concerned about
10 allowing these to be used within 150 feet of
11 where people and children live?

12 COMMISSIONER MARTENS: All I can tell
13 you, Senator, is that I have been reassured
14 by my staff, many of which are very
15 knowledgeable about crossbows and longbows,
16 that 150 feet is a safe distance, that the
17 arrows lose their force long before the
18 150 yards.

19 SENATOR KRUEGER: You said yards. I
20 think it was feet. Am I wrong?

21 COMMISSIONER MARTENS: Excuse me,
22 feet. Yes, I'm sorry, feet.

23 SENATOR KRUEGER: Okay. So it's
24 50 yards.

1 COMMISSIONER MARTENS: Yes, 150 feet.

2 SENATOR KRUEGER: And would your
3 staff argue that if there were -- I mean,
4 there's continual changes in the definitions
5 of and technology with crossbows. My
6 understanding is some of them are enormously
7 powerful and can go far farther than
8 50 yards. Perhaps you could get back to me
9 at another time with some kind of research
10 that the current era of crossbows would
11 assure us that we wouldn't be putting
12 children at risk.

13 COMMISSIONER MARTENS: Yes, I'd be
14 happy to. Obviously I would share your
15 concerns.

16 SENATOR KRUEGER: Thank you. **END**

17 CHAIRMAN FARRELL: Assemblyman
18 Sweeney for a second go.

19 ASSEMBLYMAN SWEENEY: Thank you,
20 Mr. Chairman.

21 I want to follow up on a few
22 questions asked by other members, Joe.
23 Mr. Crouch asked you a question about revenue
24 from forest products, and you indicated it's

1 reapportionments is not an unrealistic
2 number. It is a needed number for normal
3 maintenance to keep our hatcheries functional
4 for now and the future. This is a long-time
5 concern of the sportsmen.



6 The crossbow needs to be recognized
7 as a legal hunting implement, and the
8 Governor promoting that the New York State
9 DEC should determine how it will be used is
10 long overdue. The ability to use a crossbow
11 for hunting has had the support of the
12 majority of sportsmen.

13 The 500-foot to 150-foot shooting
14 distance reduction for archers from
15 structures is another logical proposal. It
16 offers adequate safety and increased
17 opportunity to manage and harvest wildlife.

18 The 50 proposed access projects,
19 access is a key element for sportsmen to be
20 able to hunt, fish and trap. More access
21 leads to more license sales, which translates
22 to more money to be used for conservation and
23 wise resource management.

24 Liability relief for landowners would

1 open up more opportunities for the sportsmen
2 to hunt, fish and trap. The opportunity for
3 a landowner to manage his lands soundly
4 without subjecting themselves to undue legal
5 liabilities. While New York State is
6 well-recognized nationally for the
7 opportunity to hunt, fish and trap and its
8 availability of quality public lands, the
9 availability to hunt on private lands offers
10 additional opportunity for quality hunting
11 and fishing.

12 We, the council, appreciate the
13 support that the State Assembly and State
14 Senate has offered over the years. I hope
15 that the legislative members in this hearing
16 today can convince their colleagues to
17 support all the environmental conservation
18 funding and legislative initiatives presented
19 under the Governor's 2014 budget. **END**

20 CHAIRMAN DeFRANCISCO: David Corr.

21 MR. CORR: My name's Dave Corr, and
22 I'm here on behalf of the New York State
23 Conservation Fund. On behalf of the
24 Conservation Fund Advisory Board, the

1 with \$4 million from the NY Works program.
2 Public access points would now be funded with
3 an additional \$6 million.



4 In addition, the proposed budget,
5 which would allow for safe crossbow hunting
6 and reduced setbacks for bow hunting, is
7 greatly appreciated. In more suburban areas,
8 deer control is simply not possible with
9 traditional firearms. Bow and crossbow
10 hunting provide effective alternatives to
11 rifles for deer control, and realistic
12 setbacks for bow and crossbow hunting make
13 that even more of an option.

14 Lastly, the Executive Budget provides
15 for legal protection for property owners,
16 lessees or occupants who allow their property
17 to be used for public recreation uses.

18 I can recall no other Governor in
19 recent memory who has so vigorously supported
20 and personally participated in the outdoor
21 activities that New York State has to offer.

22 In closing, lastly I would like to
23 thank you for your time today. Our
24 organizations remain committed to working

1 with you and the Governor on behalf of all of
2 the sportsmen and -women of New York.

3 Thank you.

4 CHAIRMAN DeFRANCISCO: Thank you.

5 Senator Ritchie.

6 SENATOR RITCHIE: I just want to say
7 thank you for the trip down.

8 Just a clarification. Chuck, I know
9 that you support legalizing crossbow, but
10 there were a couple of different proposals
11 over the last couple of years, and I know
12 there were different iterations and maybe
13 some that you liked better. I just want to
14 make sure that the proposal that the Governor
15 has put in the budget is the proposal that
16 you are supporting.

17 MR. PARKER: The New York State
18 Conservation Council has been in favor of the
19 use of crossbows as a legal hunting implement
20 for a number of years. And we believe it
21 should be included in the archery season.
22 But we also believe that, you know, approve
23 it as a legal hunting implement and let DEC
24 decide where it's going to be used. END

1 critical to New York State's economy and to
2 our public health. And so as we continue to
3 have our economic recovery, these
4 environmental agencies that have experienced
5 significant cuts do need some restorations at
6 the staffing level as well.

→ 7 And then I apologize -- I'm going to
8 chalk this up to being the mom of a
9 toddler -- I had to create an addendum to my
10 testimony. But on there you'll find we do
11 support the changes to General Obligations
12 Law and the legalization of crossbows.
13 There's information in there about some
14 studies we've done on New York forest
15 regeneration, the significant impact deer are
16 having on our forest health and possibly our
17 timber economy. So we support the
18 legalization of crossbows in order to give
19 the state another tool in reducing the deer
20 herd.

21 And then the General Obligations Law,
22 this is really important for not only private
23 landowners across the state but also for
24 The Nature Conservancy. We're a landowner,

1 and we have some serious issues, and this
2 causes us some serious stress. We actually
3 had a preserve where we had a gentleman jump
4 off of a 30-foot waterfall about a year ago
5 and break his arm. And his lawyer called
6 asking to talk to our lawyer, and they wanted
7 to know why there wasn't a sign at the top of
8 the waterfall saying it might be dangerous to
9 jump off the top of a 30-foot waterfall.

10 So if we can do things to relieve
11 some of the liability for landowners who
12 allow recreational use of their property,
13 including swimming, that would go a long way
14 for not only individual private landowners
15 but also organizations that really do work
16 hard to make landscapes safe for people to
17 enjoy, and open those private lands to the
18 public for recreation.

19 CHAIRMAN DeFRANCISCO: Thank you very
20 much. **END**

21 The next speaker is Sean Mahar,
22 Audubon Society, followed by Adrienne
23 Esposito, Citizens Campaign for the
24 Environment.

MR. LOPEZ: So in terms of total new money and re-approp for SAFE Act administration, what's our total for this year's proposed budget?

MR. FARRELL: Of the \$27.7-, we spent \$7- so we have to spend the \$27- and the \$2.3-.

MR. LOPEZ: So \$20 billion and \$3.2-.

MR. FARRELL: I'm sorry. It's written \$2.3- here. Yes, \$3.2-. I'm dyslexic but I didn't write this.

MR. LOPEZ: That's okay. So for this year \$23.2 billion in this year's budget, is that accurate for SAFE Act?

MR. FARRELL: Yes.

MR. LOPEZ: Between re-approps and new money?

MR. FARRELL: Yes.



MR. LOPEZ: Okay, thank you. And last question. Just in regard to the hunting and fishing licenses. Just curious -- if I understand correctly, we're rejecting the reinstatement of crossbow regulations so could you fill me in on that or give me a sense of what's happening with that issue?

MR. FARRELL: Yes. Our Conference voted against it -- no, we didn't vote against it. We just showed we were in favor of it. We're not in favor of it.

MR. LOPEZ: So the Conference doesn't want to renew the crossbow regulations?

MR. FARRELL: Yes. From listening to the different people speak when it was discussed, we've come to the conclusion

they are not in favor of it.

MR. LOPEZ: Thank you, Mr. Farrell. Thank you,
Mr. Speaker. *ALO*

If I may, on the bill briefly?

ACTING SPEAKER AUBRY: On the bill, Mr.
Lopez.

MR. LOPEZ: I'm sorry. On the resolution.

ACTING SPEAKER AUBRY: And you have a
second time to come around and go on the bill, Mr. --

MR. LOPEZ: When we vote. Thank you.

ACTING SPEAKER AUBRY: You're welcome.

Mr. Saladino.

MR. SALADINO: Thank you, Mr. Speaker.

Mr. Speaker, would the Chairman of Ways and
Means yield for some questions, please?

MR. FARRELL: No, I don't think so.

(Laughter)

Yes, I will.

ACTING SPEAKER AUBRY: The Chairman yields,
Mr. Saladino.

MR. SALADINO: We see how this one's going to
go.

Returning to the gap elimination adjustment
reduction, I see some monies have been funded for this program and
we've been talking about the tremendous need in our schools

Senate Resolution No. 4036

BY: Senator SKELOS KLEIN

RESOLUTION adopting proposed amendments to the 2014-2015 Executive Budget submission (Legislative Bills S6350C, S6353C, S6354C, S6355C, S6356C, S6357C, S6358C, S6359C and S6609A)

WHEREAS, It is the intent of the Legislature to effectuate the timely passage of a State Budget; and

WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and

WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2014-2015 Executive Budget submission and has recommended proposed amendments to such Budget submission in the above referenced Legislative Bills and Report on the Amended Executive Budget; and

WHEREAS, Article VII of the New York State Constitution provides the framework under which the New York State Budget is submitted, amended and enacted. The New York State Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor. The Legislature can delete or reduce items of appropriation contained in the several appropriation bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriation to those bills provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose; and

WHEREAS, An extensive study and review of the Governor's 2014-2015 Executive Budget submission has revealed that the construction of the budget bills submitted to the Legislature by the Governor constrains the Legislature in its ability to fully effectuate its intent in amending the Governor's budget submission; and

WHEREAS, The 2014-2015 Executive Budget includes funds for new programs throughout various agencies which are direct aid and grant programs, have been drafted as lump sum appropriations and are proposed to be distributed at the sole discretion of the Executive. In addition, some of these proposed initiatives would be funded by eliminating existing programs. New capital spending, distributed through regional economic development councils, is also included in the Executive proposal; and

WHEREAS, The Legislature has amended the Governor's 2014-2015 Executive Budget submission to the fullest extent possible within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution; and

WHEREAS, The Senate, in addition to the Governor's 2014-2015 Executive Budget submission bills as amended by the Senate, does hereby provide its recommendations as to provisions in the Governor's 2014-2015 Executive Budget submission which reflect those items the Senate is constrained from effectuating as amendments to the 2014-2015 Executive Budget appended hereto; and

WHEREAS, It is the intent of the Legislature that upon the passage of the Governor's 2014-2015 Executive Budget submission as amended by the Senate, and the incorporated Report on the Amended Executive Budget may provide a basis for both houses of the Legislature to convene Committees on Conference pursuant to Joint Rule III of the Senate and Assembly for the purpose of reconciling any differences between the amendments to the Governor's budget as proposed by each house of the Legislature; now, therefore, be it

RESOLVED, That, the above referenced legislative bills (S6350C, S6353C, S6354C, S6355C, S6356C, S6357C, S6358C, S6359C and S6609A) be and are incorporated as part of this resolution and are hereby adopted as the New York State Legislature's proposed amendments to the 2014-2015 Executive Budget Submission.

REPORT ON THE AMENDED EXECUTIVE BUDGET

ALL STATE AGENCIES AND OPERATIONS

Aging, State Office for the

State Operations (S.6350-C)

- * The Senate concurs with the Executive's proposal.

Aid to Localities (S.6353-C)

- * The Senate modifies the Executive's recommendation of \$230.1 million as follows:
 - o Provides an additional \$5 million for the Community Services for the Elderly program.
 - o Provides \$978,000 for Aging Services Grants.
 - o Denies eliminating funding for seven discrete Managed Care Consumer Assistance Programs (MCCAP) and creating a \$1.8 million competitive program, and restores funding for each program.
 - o The Senate advances legislation in S.6358-C and provides \$2 million within the Department of Health, to expand the income eligibility for the Elderly Pharmaceutical Insurance Coverage (EPIC) program to \$75,000 from the current \$35,000 level, for singles and to \$100,000 from the current \$50,000 level, for married enrollees.

Adirondack Park Agency

State Operations (S.6350-C)

- * The Legislature concurs with the Executive recommendation of \$5,085,400.

Capital Projects (S.6354-C)

- * The Legislature concurs with the Executive recommendation of re-appropriating previous years funding.

Agriculture and Markets, Department of

State Operations (S.6350-C)

- * The Senate concurs with the Executive recommendation of \$119,709,000. However, it denies language allowing risk-based assessments within the appropriation.

Article VII Proposals (S.6357-C)

* PART H: The Senate amends the Executive's proposal to on pesticide reporting requirements by only authorizing a three year extension for product registration fees.

* PART I: The Senate accepts the Executive's proposal to allow the use of crossbows for hunting in New York State, but denies the waiver of state documents law procurement requirements, the expansion of liability releases, and creation of three- and five- year hunting, fishing and trapping licenses. The Senate accepts the Executive's proposal to issue distinctive license plates for holders of certain sporting licenses. However as the Executive already has begun

waiving statutorily required fees for such license plates before obtaining necessary authority from the Legislature, the Senate proposes that the Executive be granted such authority retroactive to January 1, 2014.

* PART UU: The Senate adds language to extend by two years the deadline for heavy-duty diesel vehicles to be retrofitted with diesel particulate filter devices as currently required by the Diesel Emission Reduction Act (DERA).

* PART VV: The Senate adds language to lay out a repowering plan for the existing generating facility in the Village of Port Jefferson, and includes an incentive package to aid in the remediation of the footprint for the new plant.

Article VII Proposals (S.6359-C)

* PART Q: The Senate modifies the Executive bill to propose comprehensive modifications and reforms to the State environmental remediation and redevelopment programs. The Senate modifies the Executive's bill by:

- o Maintain as-of-right credit structures, but incorporating substantial portions of the Executive's new stringent eligibility standards to ensure, even more than the current program, that "undeserving" sites do not get into program
- o Require applicants to prove that site is heavily contaminated by on-site generated wastes to get into the Brownfields Credit Program (BCP), and that the site must demonstrate extremely high property value distress.
- o Proposes a new NY Rapid program for contaminated sites that do not pose a significant threat to the health and the environment. NY Rapid participants will receive a full State liability release for cleaning up these less dangerous sites, but will not be eligible for tax credits.
- o Allow most Superfund sites into the BCP expanding the proposal to those which are currently not eligible, for sites now, and in the future, controlled by true volunteers with no connections to responsible parties. o Modify current credit levels and cost bases, streamlining the oversight process for the plan for redevelopment as well as the credit application process.
- o Allow BCP projects to apply for Excelsior credits.
- o Establish incentives in place for the Brownfield Opportunity Area program to expedite plan designations.
- o Accept the Executive language to extend the tax credits for ten years until December 31, 2025, on Superfund, Environmental Restoration Program, Environmental Zones, BCP fees, Hazardous Waste charges, and reporting requirements.
- o Propose reforms to the Oil-Spill program to provide substantive liability protections to true volunteers that remediate these sites.



SUMMARY OF
RECOMMENDED CHANGES
TO THE

EXECUTIVE BUDGET

FISCAL YEAR APRIL 1, 2014 TO MARCH 31, 2015
STATE OF NEW YORK

NEW YORK STATE ASSEMBLY
WAYS AND MEANS COMMITTEE

MARCH 2014

SHELDON SILVER
SPEAKER

HERMAN D. FARRELL, JR.
CHAIRMAN

March 31, 2014,
144 pages

- Zoos, Botanical Gardens and Aquaria (ZBGA)- \$1 million;
 - Pine Bush Commission- \$125,000;
 - Long Island Pine Barrens- \$125,000;
 - Oceans and Great Lakes- \$250,000; and
 - Water Quality Improvement Program- \$1 million.
- The Legislature removes design/build language in various capital appropriations.



Article VII

- The Legislature modifies the Executive's hunting and fishing proposal to:
 - authorize crossbow use to include minimum age requirements, training classes and the continued presence of an archery-only season;
 - reject the land owner liability provisions of the General Obligations Law;
 - issue distinctive "I Love NY" hunting and fishing license plates with technical modifications;
 - reject the provision to allow DEC to issue joint printing/advertising contracts;
 - decrease the distance at which weapons could be discharged from residences, from 500 feet to 250 feet for crossbows and 150 feet for long bows; and
 - reject the authorization to provide three and five year licenses.
- The Legislature rejects the Executive's proposed changes to pesticide reporting requirements but authorizes a three year extension to the program.
- The Legislature provides for a one-year delay in the implementation of the Diesel Emissions Reduction Act (DERA).
- The Legislature establishes a bi-state task force with the State of New Jersey to examine flooding-related issues on the shared border with Rockland County.



Report on the State Fiscal Year 2014-15 Executive Budget

February 2014

**Thomas P. DiNapoli
New York State Comptroller**

The Executive Budget provides \$40 million in appropriations through the New York Works program in support of developing new public access sites on State-owned lands, new air monitoring infrastructure, fish hatchery infrastructure improvements and other projects.

The Executive Budget proposes a new \$100 million appropriation in support of programs to clean up legacy hazardous waste sites. Of this funding, \$90 million is proposed in support of the New York State Superfund and \$10 million is proposed in support of the Environmental Restoration Program (ERP). A proposed amendment to the ERP would allow the DEC to conduct ERP projects on behalf of municipalities.

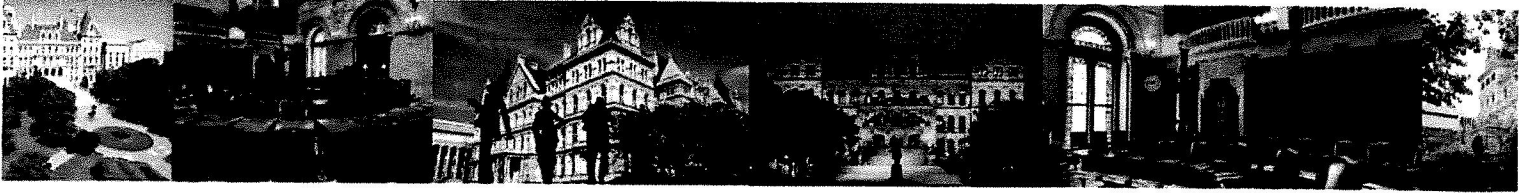
The Executive Budget proposes to make the fee charged for registration of pesticides permanent, and also proposes changes to New York State's laws governing the reporting of pesticide use to eliminate required reporting by commercial pesticide applicators on the type and amount of pesticides used, and the location of pesticide use. DEC's reporting requirements associated with this information would also be eliminated. Reporting of pesticide sales data would be expanded to include all retail sales with certain exceptions. The Executive's 21-day amendments would change the composition and duties of the Health Research Science Board. The Executive's 30-day amendments would delay the effective date for changes to the reporting provisions of the pesticide reporting law by eight months, from April 1, 2014 to January 1, 2015.

The Executive Budget proposes to allow hunting with crossbows and to make new three- and five-year hunting and fishing licenses available. The amendments reduce some license fees, but due to projected increases in sales, the changes are assumed to be revenue neutral. The Executive Budget also proposes to amend the State General Obligations Law to reduce the liability of landowners who allow recreational uses of their property.

The Executive Budget proposes significant amendments to the New York State Brownfield Cleanup Program (BCP). The date by which site cleanup must be completed to qualify for tax credits is extended by 10 years to December 31, 2025. Under the new program, all project sponsors that complete site cleanup will be eligible to receive tax credits based on the cost of cleanup. Eligibility for tax credits based on site redevelopment costs would be restricted to properties that have been vacant for more than 10 years, properties where the cost of cleanup exceeds the site's appraised value after remediation, and projects determined by the Department of Economic Development to be economic development priorities based on specific proposed criteria.

New eligibility standards would restrict admission to the program to those sites where contamination violates BCP soil cleanup objectives, or other health or environmental based standards. Under proposed amendments, sites on the State Superfund list would be eligible for the BCP if no responsible party that is able to pay for site cleanup is identified. A new "BCP EZ" program is proposed for parties that waive their right to tax credits. Under this program, the DEC would be authorized to exempt parties that are not associated with past contamination from BCP procedural requirements.

NEW YORK STATE



Staff Report on the SFY 2014-15
Adopted Budget

Senator Dean G. Skelos

Republican Conference Leader
and Majority Coalition Leader

Senator Jeffrey D. Klein

Independent Democratic Conference Leader
and Majority Coalition Leader

Senator John A. DeFrancisco

Chairman, Finance Committee

Robert F. Mujica

Secretary to the Finance Committee

MARCH 2014



- \$200,000 for restoration of the Dutch Hollow Brook Watershed;
- \$100,000 for the Rockland-Bergen flood mitigation task force; and
- \$5,000,000 for EPCAL sewage control and water management systems.

Capital Projects (S.6454-D)

- The Legislature amends the Executive’s recommendation of \$546,400,000 as follows:
 - Provides an additional \$5 million for the Environmental Protection Fund for a total appropriation level of \$162 million, \$9 million over SFY 2014.
 - Denies, without prejudice, \$100 million in additional bonding authority for the State Superfund program.

→ *Article VII Proposals (S.6355-D)*

- PART EE: The Legislature amends the Executive proposal to enact the Open for Fishing and Hunting II program as follows:
 - Allows the use of crossbows in New York State, with the exception of Suffolk and Westchester counties, for both big and small game. Crossbows hunting will be limited to the final two weeks in the southern zone and the final ten days in the northern zone (i.e., the Adirondack Park) of the current long bow season.
 - Eliminates the annual service charge on distinctive license plates for the holders of certain sporting licenses and State Parks Empire passes for a vehicle’s first two registration periods.
 - Authorizes the sale of reduced price sporting licenses for hunters, trappers and anglers for up to ten days, and allows up to eight free fishing days per year.

Article VII Proposals (S.6357-D)

- PART H: The Legislature modifies the Executive proposal on pesticide registration fees and registration requirements by only authorizing a three-year extension of the current fees to July 1, 2017, while maintaining all current reporting requirements.
- PART I: Substituted by Part EE of S. 5355-D.
- Part CC: The Legislature includes legislation to create the Rockland Bergen Flood Mitigation Task Force. The task force shall develop best use land practices and coordinate communication of stream cleanup, maintenance and protection efforts.
- PART DD: The Legislature includes legislation to extend the period of compliance for the retrofitting of heavy-duty diesel vehicles pursuant to the Diesel Emissions Reduction Act of 2006 (DERA) to December 31, 2016 (a one year extension).

Article VII Proposals (S.6359-D)

- PART Q: The Legislature denies without prejudice the Executive’s proposed reforms to the State Superfund and Brownfield Cleanup programs.

Executive Chamber

State Operations (S.6350-E)

- The Legislature concurs with the Executive recommendation of \$17.9 million.



SUMMARY OF THE
ASSEMBLY RECOMMENDED CHANGES
TO THE
**EXECUTIVE
BUDGET**

FISCAL YEAR APRIL 1, 2014 TO MARCH 31, 2015
STATE OF NEW YORK

NEW YORK STATE ASSEMBLY
WAYS AND MEANS COMMITTEE

MARCH 2014

March 12, 2014
179 pages

Article VII

- The Assembly modifies the Executive's hunting and fishing proposal to:
 - reject the authorization of crossbow use;
 - reject the modifications of the land owner liability provisions of the General Obligations Law;
 - reject the issuance of distinctive license plates and an associated waiver of fees; and
 - reject the authorization to allow DEC to issue joint printing and advertising contracts.

- The Assembly rejects proposed changes to pesticide database reporting requirements and adds provisions to increase information availability. In addition, the Assembly accepts a proposal to make current pesticide fees permanent.

- The Assembly rejects the Executive's brownfield cleanup proposal, but increases the financing authorization for the Superfund by \$1 billion over a period of 10 years.

- The Assembly includes legislation to require DEC to expand the existing collection program for unwanted pharmaceuticals to nursing homes and to institutions located in areas that have sole source aquifers.