

LAWS OF NEW YORK, 2011

CHAPTER 501

AN ACT to amend the real property law, in relation to lapse of oil and gas interests in Allegany state park

Became a law September 23, 2011, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Legislative declaration. The legislature finds and declares that there exists within Allegany state park a unique situation whereby rights to oil and gas resources beneath the surface were severed at or prior to the time of acquisition of lands of the park by the state of New York, and that currently such rights may remain in private ownership under significant areas of the park. Many of these rights are of ancient origin and uncertain ownership and have never been exercised since such acquisition, yet they complicate the state's ownership rights in the park, and create the potential for future interference with the public's right to full enjoyment of the park's unique and substantial natural beauty and resources. The legislature finds that where oil and gas rights have not been used for twenty years, they may properly be viewed as dormant, and it is reasonable and appropriate to lapse such rights unless their owners assert their claims to them within a reasonable period of two years. The provisions of this act provide ample notice to the unknown owners of the potential lapse of their rights as well as ample opportunity to assert their claims. Thus, this act provides reasonable protection of such rights while furthering the important public policy of promoting the public's use and enjoyment of parklands free from potential interference by dormant subsurface rights.

§ 2. The real property law is amended by adding a new section 329-a to read as follows:

§ 329-a. Lapse of oil and gas interest within Allegany state park. The provisions of this section shall apply to oil and gas interests that were previously severed from interests in lands that are currently owned by the state within Allegany state park.

1. Any interest in oil and gas shall, if unused for a period of twenty years immediately prior to the effective date of this section, be extinguished, and the ownership thereof shall revert to the state, unless a statement of claim is filed within two years after the effective date of this section, in accordance with subdivision five of this section.

2. Such oil and gas interest shall mean the interest which is created By an instrument transferring, either by grant, assignment, or reservation or otherwise, an interest of any kind, in oil and gas located on or beneath lands owned by the state within Allegany state park; provided, however, that such interest shall not include a lease for a fixed term.

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

3. Such oil and gas interest shall be deemed to be used when: (a) oil and gas is produced; (b) operations are being conducted for injection, withdrawal, storage or disposal of water, gas or other fluid substances; (c) rentals or royalties are being paid by the owner thereof for the purpose of delaying or enjoying the use or exercise of such rights; (d) any such use is being carried out on any tract with which such oil and gas interest is being unitized or pooled for production purposes; or (e) Taxes are paid on such oil and gas interest by the owner thereof. Any use pursuant to or authorized by the instrument creating such oil and gas interest shall be effective to continue in force all rights granted by such instrument.

4. Within thirty days after the effective date of this section, the Office of parks, recreation and historic preservation shall cause to be published in three successive issues of three newspapers of general Circulation published in the county of Cattaraugus, a notice announcing the enactment of the provisions of this section, including a summary thereof in plain English.

5. The statement of claim provided in subdivision one of this section shall be filed by the owner of such oil and gas interest within two years immediately following the effective date of this section and shall contain the name and address of the owner of such interest and description of the land on or under which such oil and gas interest is located. Such statement of claim shall be accompanied by a copy of the instrument creating or reserving such interest and shall be filed in the office of the clerk of the county of Cattaraugus. Where such an interest is co-owned by more than one party, any one owner may file the statement of claim on behalf of all owners.

6. Failure to file a statement of claim within the time provided in subdivision five of this section shall not cause an oil and gas interest to be extinguished if the owner of such oil and gas interest: (a) made diligent effort to preserve all of such interests as were not Being used, and did within the period provided in subdivision five of this section preserve other oil and gas interests, in said county, by the filing of statements of claim as required by this section; and (b) failed to preserve such interest through inadvertence; and (c) filed the statement of claim required by this section within sixty days after publication of notice as provided in subdivision seven of this section or, if no such notice is published, within sixty days after receiving actual knowledge that such oil and gas interest had been extinguished.

7. At any time following the expiration of the period provided in subdivision five of this section, the office of parks, recreation and historic preservation may give notice of the lapse of any such oil and gas interest by publishing the same in a newspaper of general circulation in the county of Cattaraugus, and, if the address of such oil and gas interest owner is shown of record or can be determined upon reasonable inquiry, by mailing within ten days after such publication a copy of such notice to the owner of such oil and gas interest. The notice shall state the name of the owner of such oil and gas interest as shown of record and a description of the land. If a copy of such notice, together with an affidavit of service thereof, shall be promptly filed in the office of the clerk in the county wherein such land is located, the record thereof shall be prima facie evidence in any legal proceedings that such notice was given.

8. Upon the filing of the statement of claim provided for in subdivision five of this section or the proof of service of notice as provided in subdivision seven of this section in the clerk's office for the county of Cattaraugus, the clerk shall record the same in a book to be kept for that purpose, which shall be known as the "dormant oil and gas interest record," and shall indicate by marginal notation on the instrument creating the original oil and gas interest the filing of the statement of claim or affidavit of publication and service of notice.

9. The filing of the statement of claim provided in this section shall not be evidence of title to or ownership of the interest claimed therein for any purpose other than that provided in this section.

§ 3. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

Chapter Bill No. Signed Date Effective Date

501 A408 09/23/2011 09/23/2011

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A408

SPONSOR:

Hoyt (MS)

TITLE OF BILL: An act to amend the real property law, in relation to lapse of oil and gas interests in Allegany state park

SUMMARY OF SPECIFIC PROVISIONS: Amends the Real Property Law by adding a new section 329-a to provide that oil and gas interests in Allegany State Park unused for 20 years will lapse and revert to New York State unless a statement of claim is filed in accordance with subdivision five of this section. Failure to file a statement of claim will not result in lapse of such oil and gas interest if a diligent effort to preserve such interest were made with the period provided in subdivision five; or there was a failure to provide a statement of claim through inadvertence, or if no such notice was published within sixty days after receiving actual knowledge that such oil and gas interest had been extinguished.

JUSTIFICATION: Allegany State Park is home to 67,000 acres of outdoor recreational opportunities for residents in Rochester and Buffalo and the surrounding regions of the Niagara Frontier, Genesee Valley and Finger Lakes. The park is an invaluable asset to the state's tourism economy. It offers a hundred-year-old mixed hardwood forest, a 350-year-old old-growth forest and one of the most botanically diverse ecosystems in New York State. Its incomparable beauty and unique ecological resources deserve a level of protection at least equal to if not greater than that afforded other New York State parks. Oil and gas exploration in the Park would create a tangle of roads and wellheads that would ruin its forests and render this amazing place unfit as a park.

This bill will allow greater protection for Allegany State Park with regard to the lapse of oil and gas interest on land underneath the park. This bill allows ownership of mineral rights underlying Allegany State Park to revert to the state of New York if those rights are unused over a twenty year span. Ownership of these rights are often extremely difficult, if not impossible, to determine.

A new concern exists with the potential of natural gas exploration in the Marcellus Shale formation that lies beneath much of Allegany State Park. An environmentally disruptive drilling practice called hydraulic fracturing or "hydrofracking" is necessary to extract natural gas from the 1-3 mile deep Marcellus Shale. This process requires unprecedented 5 acre wellheads and

unprecedented volumes of water (2-9 million gallons). Such activities would cause disruption to the vegetation and wildlife of Allegany State Park. Any new oil or gas exploration in Allegany State Park would be contrary to the recreational and ecological value of the park.

The bill's intent is to inventory the dormant oil and gas rights in Allegany State Park and to have those rights revert back to the state if unused. The bill will limit the disruption of Allegany's recreational and ecological systems which are now threatened by the exploitation of those privately held rights.

PRIOR LEGISLATIVE HISTORY:

07/10/09 referred to judiciary
01/06/10 referred to judiciary
03/09/10 reported
03/11/10 advanced to third reading cal.725
03/15/10 passed assembly
03/15/10 delivered to senate
03/15/10 REFERRED TO JUDICIARY
04/14/10 SUBSTITUTED FOR S7170
04/14/10 3RD READING CAL.344
05/10/10 recalled from senate
05/10/10 SUBSTITUTION RECONSIDERED
05/10/10 RECOMMITTED TO JUDICIARY
05/10/10 RETURNED TO ASSEMBLY
05/10/10 vote reconsidered - restored to third reading
05/10/10 amended on third reading 9070a
05/26/10 repassed assembly
05/26/10 returned to senate
05/26/10 RECOMMITTED TO JUDICIARY
05/27/10 SUBSTITUTED FOR S7170A
05/27/10 3RD READING CAL.344
06/09/10 STARRED ON CALENDAR
06/21/10 recalled from senate
06/21/10 SUBSTITUTION RECONSIDERED
06/21/10 COMMITTED TO RULES
06/21/10 RETURNED TO ASSEMBLY
06/21/10 vote reconsidered - restored to third reading
06/21/10 amended on third reading 9070b
07/01/10 repassed assembly
07/01/10 returned to senate
07/01/10 RECOMMITTED TO RULES

FISCAL IMPLICATIONS: New York State will incur a nominal expense in complying with this bill.

EFFECTIVE DATE: Immediately.
