

NEW YORK STATE PASSES \$3 BILLION ACT FOR ENVIRONMENTAL RESTORATION AND PROTECTION – NEXT STOP, THE BALLOT BOX

Hodgson Russ Environmental Alert
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As part of 2021 State Budget that passed on April 2, 2020, the New York State Legislature adopted the Environmental Bond Act, also termed the Restore Mother Nature Bond Act (Act). The Act, proposed by Governor Cuomo in his 2020 State of the State address, authorizes funding for a variety of environmental protection and restoration projects. Funding for the program will be raised in part by the sale of up to \$3 billion in bonds issued by the State. The Act specifies that at least \$1 billion of the funds will go toward restoration and flood risk management; \$550 million will go to water quality and other projects; \$550 million will go to open space, conservation, and recreation; and \$700 million will go to climate change mitigation. A coalition of more than 100 environmental stakeholders and business groups – including Riverkeeper, the Nature Conservancy, the New York League of Conservation Voters, the Natural Resources Defense Council, and the Associated General Contractors of New York State – supported the inclusion of the Act in the State budget, citing the broad environmental benefits the funding will enable.

The Act leaves much of the programmatic details up to the New York State Department of Environmental Conservation (DEC), as the agency responsible for implementing the Environmental Conservation Law, but carries significant implications for municipal planning and infrastructure improvements, land preservation activities, and natural resource planning efforts.

It is important to note that, while the Act was included in the approved budget, given the fiscal considerations associated with it, a certification still needs to be made by the State's budget director that the State can proceed without adversely affecting other necessary projects and then voters will need to approve the \$3 billion authorization at the ballots in November.

Here's what you should know about what's in the Act.

I. What are Bond Acts?

Bond Acts are a mechanism for the State to fund programs by borrowing money to meet pressing needs. Bond money can only be used for projects that are expected to last at least the lifetime of the borrowing (usually, and in this case, 30 years). When

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the State issues bonds, it creates debt, which is repaid through revenues and interest from the sale of bonds.

The State Comptroller has some leeway under the State Finance Law to issue the bonds and set interest rates. The State Comptroller may issue a single series of bonds or he may issue several series. He must also set an interest rate that is sufficient to encourage the sale of the bonds. Interest must be repaid either annually or semiannually, depending on the whether the set interest rate is fixed or variable.

The last environmental bond act, which was passed by the New York State Legislature in 1996, authorized the state to issue \$1.75 billion in bonds for preservation and restoration of the state’s environment. The Restore Mother Nature Bond Act greatly expands funding for, and the types of, covered environmental initiatives.

II. What is the Restore Mother Nature Bond Act?

The Restore Mother Nature Bond Act is the largest environmental bond act in State history. The Act is part of Governor Cuomo’s \$33 billion, five-year plan to fight climate change. The Act permits the State Comptroller to issue and sell bonds, with the proceeds to be put in a Restore Mother Nature Bond Fund for capital projects “related to design, planning, site acquisition, demolition, construction, reconstruction, and rehabilitation” of the following types of projects (though funding is not limited to these activities):

- Restore habitat and reduce flood risk, including wetland, floodplain, and stream restoration and protection;
- Acquire real property;
- Enhance shoreline protection;
- Preserve forests;
- Develop and improve fish hatcheries;
- Remove, alter, and right-size dams, bridges, and culverts;
- Improve water quality through wastewater infrastructure improvements and upgrades, including green infrastructure projects that reduce storm water impacts, agricultural nutrient management and expansion of riparian buffers;
- Protect open space and invest in recreational infrastructure including land acquisition, development and improvement of parks, campgrounds, nature centers, and other State recreational facilities;
- Expand the use of renewable energy to mitigate climate change, including clean energy or resiliency projects; and
- Preserve, enhance, and restore the quality of the State’s environment

Funding for these projects will be available through contracts or vouchers from the DEC or another State agency, if the DEC decides to delegate program oversight. Once the Act passes the general election, the DEC will have to appropriate funds from the Restore Mother Nature Bond Fund for these projects. The DEC may contract directly with entities who will carry out these projects, or may permit municipalities to apply for funds to undertake, maintain, and operate projects.

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Bonds that have already been issued by the State for the same types of projects as those authorized under the Act can also be used to fund the program, which could result in more than \$3 billion for capital projects. In addition, the Act authorizes additional state funding for capital projects. While the Act itself does not put a dollar value on the amount of available state funding, the State Budget allocated funding to programs that could support the broad climate change mitigation activities contemplated in the Act.

III. What activities are expected to be funded through the Act?

The funds may be used for local, county, or State-level projects. On a State level, DEC has noted that projects such as Trees for Tribes, a streamline planting project in the Hudson River Estuary Watershed, could qualify for Act funds. Trees for Tribes meets the Act's goal of protecting and restoring riparian buffers, habitat, and waters by providing riverside landowners with a "buffer in a bag" – a bag of 25 seedlings intended to be planted as riverbank fortification. Another DEC initiative that may be eligible includes the State Artificial Reef Network, which recycles and cleans discarded construction and project materials and repurposes them as artificial reefs to strengthen the marine habitat and fisheries within the State. DEC has already undertaken a supplemental generic environmental impact statement for the program's expansion. Many other fishery-enhancing programs would also be eligible for Act funds as well, such as improving public access for fishing, disease diagnostics and response for marine die-off (such as the Peconic Bay scallops in 2019), and investing in fish hatcheries.

In addition to these DEC projects, other State agencies may see funding from the Act through renewable energy investments. For example, the New York State Office of Parks, Recreation, and Historic Preservation together with the New York Power Authority are actively working to site solar projects in State parkland to meet the goals of the Climate Leadership and Community Protection Act (CLCPA).

On a local level, projects to reduce flooding issues, protect drinking water quality, and make much needed infrastructure advancements may be on the table. At a roundtable in Lake Placid, New York on March 11, 2020, State and local leaders gathered to discuss project opportunities. Local government representatives expressed a need for projects such as right-sized green transportation options, wastewater treatment upgrades for municipalities that otherwise could not afford such a large expenditure despite the critical nature of the infrastructure, and support for restoration of streams and waterways that have been damaged or forced off course by major weather incidents such as Hurricane Irene.

IV. What's Next?

Before the Bond Act can be put on the November ballot, the Director of the Division of the Budget must certify that the debt can be issued within the state's fiscal plan without adversely affecting funding available for currently authorized capital projects that are essential to the health and safety of the public or are essential government services. If the Director makes that finding, the Act will be on the ballot for voter approval. A Siena Research Institute Poll from January 2020 found that over 70% of New York voters support this kind of state investment. If approved, the state and local governments will be able to allocate funding for projects that support the goals of the Act; however, if the Director does not find that this debt can be issued, the Act will not appear on the ballot and will be deemed repealed.

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For more information about the Restore Mother Nature Bond Act or any other environmental law questions, please contact either Jenny Schamberger (716.848.1691) or Sarah M. Main (518.433.2424).

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