

**ESFPA Legislative Bill Tracking
2019 – 2020
Report
(February 11, 2020)**

ESFPA is tracking over 180 individual bills presently introduced in the NYS Legislature for the 2019-2020 Legislative Session and monitors those bills of interest/impact on our Membership and reports monthly to the Board on status.

The Senate and Assembly convened the 2019 Legislative Session on Wednesday, January 9, 2019. Governor Cuomo delivered his State of the State Message to the Legislature on January 15th which framed his legislative and budget priorities for 2018. The Governor delivered his Budget to the Legislature on January 15th, as well, which included his Executive Budget proposals for appropriations as well as many Article VII Bills which enact legislation, many which do not include funding but are enacted into law as part of his budget negotiations.

The 2019 Legislative Session has taken on a number of new characteristics with new leadership. The Governor set for a very ambitious 100 day “Progressive Agenda” and the Legislature followed suit in moving quickly on a number of very progressive pieces of legislation. Already we have seen sweeping legislation enacted on gun control, gender identity, early voting and reproductive health care. On April 10th the “100 days” ended and the Legislature adjourned for two weeks.

Although technically a few hours late the Governor and Legislature did enact an on time budget for SFY 2019-2020. The Budget is a mixed blessing for the forests of New York and the forest products industry. We saw some good in the Environmental Protection Fund and we avoided some policy (e.g. climate change and prevailing wage).

On January 8, 2020 the Legislature reconvened for the 2020 legislative session. Governor Cuomo delivered his State of the State Message on January 8 and will present his Executive Budget proposal by the third week in January.

To date ESFPA has filed 8 Memorandum of Support and 11 Memorandum of Opposition on bills thus filed. These bills are summarized below and you are directed to our web site at www.esfpa.org where you can see our complete Bill Tracking Reports and copies of filed memorandum.

There are also several bills (28 for now) summarized in this report where ESFPA has not yet taken a position and we would appreciate feedback on those bills.

Memorandum of Support (8)

A 954 (Jones)/ S 830 Gallivan

This proposed legislation provides a tax credit for thirty percent of the cost of wood pellets used for residential heating. This legislation was introduced in the 2017-18 Legislative Session but did not advance beyond the respective legislative committees. Assemblyman Jones introduced A. 954 on 1/14/19 and it is referred to the Assembly Ways & Means Committee. Senator Gallivan introduced S. 830 on 1/9/19 and it is referred to the Senate Committee on Investigations and Government Affairs.

In 2018 ESFPA and NYBA worked hard to get these two pieces of legislation as a “Sane As Bill”. We also worked with the Executive Chamber in 2018 to get this credit endorsed as part of the Forestry & Wood Products Summit of which it was not included in those outcomes.

ESFPA submitted a Memorandum of Support on 2/5/19. The likelihood of this legislation passing is slim unless it is moved through the budget process. It also is not likely to move in the Senate unless the legislation is picked up by a majority member.

A 1625-A (Jones)/ S 2026-A (Little)

This legislation details the two parcels that will be added to the Forest Preserve as required by the Constitutional amendment and Title 21 of Article 9 of the ECL (i.e. Health & Safety Act). The first parcel is located in the Catskills in the town of Olive in Ulster County, consisting of approximately 214 acres of land, and the second parcel is located in the Adirondacks in the Town of Moriah in Essex County, consisting of approximately 1206 acres of land. These two parcels total approximately 1,420 acres, which far exceeds the constitutional amendment and implementing legislation's 250-acre requirement.

ESFPA and its members supported the 2017 Constitutional amendment and continue to support the implementation of this legislation to make the amendment operate within the Adirondack and Catskill Forest Preserve. Our member businesses and residents within the Adirondacks and Catskills will benefit through safer road networks and infrastructure access to rights-of-ways.

Assemblyman Jones re-introduced A 1625 on 1/16/19. Senator Little re-introduced S 2026 on 1/18/19. The Bills were committed to the respective Environmental Conservation Committees and on 1/30/19 were amended to reflect some technical changes in the parcels identified. ESFPA submitted a memorandum of Support on 2/4/19.

1/30/19 the bills were amended to add yet more acreage. The Assembly continues to want more acreage before moving on this final legislation. It has been 18 months since the voters authorized this Constitutional amendment.

A 2045 (Gunther)/S 1213 (Ritchie)

This bill seeks to encourage the owners of land and water areas to permit their use for recreational activities. Landowners may be more receptive to opening their lands for recreational use if they would not be subject to liability for doing so. In order to promote the availability of recreational opportunities, the liability of landowners is limited in GOL § 9-103.

This bill would not change the existing protection from a landowner's willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity. It would not apply in cases where a fee is paid for any recreational use. ESFPA supports this legislation in that it helps to provide the public with recreational benefits of privately owned forest land and further protects those landowners from onerous liability which would dissuade them from allowing public access.

Senator Ritchie re-introduced S 1213 on 1/11/19 and committed the Bill to the Senate Judiciary Committee. Assemblywoman Gunther re-introduced A 2045 on 1/22/19 and referred it to the

Assembly Judiciary Committee. This bill may face challenges moving in the Senate without a majority member sponsor. ESFPA submitted a Memorandum of Support on 2/4/19.

A 2282-B (Woerner)/S 3410-A (Harckham)

This legislation would establish a self-directed approach for large energy users to “bank” their payments of state-imposed energy charges. This self-directed approach would incentive customers to make investments in renewable energy knowing that their state charges are within their control for investments in energy conservation and renewable energy projects. The legislation would allow business customers, as well as other large energy customers, to utilize current energy assessments to meet the State energy goals on their own facilities without having to wait and apply to the NYS Energy Research & Development Authority on a competitive basis. ESFPA has conveyed that as long as biomass was treated the same as any renewable resource we were fine with the bill.

Assemblywoman Woerner re-introduced this bill on 1/22/19 and it is committed to the Assembly Energy Committee. Senator Harckham re-introduced this bill on 2/6/19 and it is referred to the Senate Energy & Telecommunications Committee. It is good that Senator Harckham picked up this legislation in the Senate as a majority member. ESFPA submitted a Memorandum of Support on 2/8/19.

3/21/19 A. 2282-A amended and recommitted to Energy. Assemblywoman Warner amended to explicitly include biomass per ESFPAs request. No change to S. 3410.

3/28/19 Senator Harckham amended S. 3410-A but did not explicitly include biomass. Assemblywoman Woerner amended to A. 2282-B which now is a Same As to S. 3410-A but does not explicitly mention biomass.

5/1/19 ESFPA met with Senator Krueger under the suggestion that she may have mentioned to Harckham to not include biomass. She said she has not commented on this bill to Harckham.

5/29/19 ESFPA and BCNY met with Senator Harckham (Joelle Fosket) and they indicated that 10+ members of the Majority Conference had issues with the term biomass (not biogas) in the bill. Subsequent meeting with Assemblywoman Woerner revealed that Assembly Central Staff revised the bill to give definitions and the like to the PSC. We could live with this language which does not preclude biomass. We are awaiting an amended bill.

A 2296 (Woerner)/S 1939 (Little)

This legislation would establish a forestry stewardship and habitat conservation credit for personal income and business franchise taxes for landowners in New York State. Over 100,000 private forest wood land owners and 7 million acres of privately owned forests could potentially take advantage of such a credit. More importantly, this legislation encourages active forest stewardship and saves money for landowners who hopefully will invest in stewardship activities.

Senator Little re-introduced S 1939 on 1/17/19 and committed the Bill to the Senate Investigations & Government Operations Committee. Assemblywoman Woerner re-introduced A 2296 on 1/22/19 and referred it to the Assembly Ways & Means. This bill may face challenges moving in the Senate without a majority member sponsor. ESFPA submitted a Memorandum of Support on 2/4/19.

This bill faces an uphill battle since it has budget implications and does not have a Senate majority sponsor.

A 3632 (Gunther)/S 920 (Young) (enacting Clause stricken) – Now No Same As

These bills would amend the Environmental Conservation Law in relation to providing the definition of integrated pest management (IPM). New York State lacks a clear definition of what this actually means. This legislation would define IPM relying on input from Cornell University and existing federal and State law and regulations thus providing a clear and unified starting point for future development and regulation.

Forest landowners and farmers can use a variety of tools to combat unwanted pests in their woods, fields, vineyard and orchards. The decision to use each of these tools at a specific time is based upon environmental, economic and other factors facing the farmer during the growing season. The IPM definition in these bills appropriately refers to the goal of managing pests using all the options available including biological, cultural, physical and chemical tools. For these reasons, ESFPA would likely support of this legislation.

This legislation passed in the Senate in 2017 and 2018 but has never moved out of committee in the Assembly. Senator Young re-introduced S 920 on 1/9/19 and it was referred to the Senate Environmental Conservation Committee. Assemblywoman Gunther re-introduced A 3632 on 1/29/19 and it was referred to the Assembly Environmental Conservation Committee. The likelihood of this legislation passing is slim unless it is picked up by a majority member in the Senate. ESFPA submitted a Memorandum of Support on 2/10/19. Senator Young announced that she would be resigning from the Senate on 2/28/17 and would leave within a month. S. 920 had its enacting clause stricken when she resigned 4/1/19.

A 4294 (Cusick)/S 23 (Parker) S 23 Passed Senate 3/6/19 – Passed Both Houses

This legislation would require the Public Service Commission (PSC) to modify the Clean Energy Standard (CES) to ensure that operating renewable electric generation facilities stay in operation in New York. The CES, as it is currently drafted, will likely lead to renewable energy projects leaving the State or retiring their units and lead to the state losing ground on its ambitious renewable energy targets. This legislation is being championed by ACENY and ReEnergy.

This legislation was introduced by Senator Parker on 1/9/19 and Assemblyman Cusick on 2/4/19. This is significant in that they both chair their respective Energy Committees. ESFPA submitted a Memorandum of Support on 2/22/19. S. 23 passed the Senate on June 20, 2019 and was passed by the Assembly on the same day. The bill awaits action (signature or veto) by the Governor. We suspect this may be vetoed but are not sure. Either way with the enactment of the CLCPA there is concern that even if biomass gets a more beneficial maintenance tier treatment there will now be a need for a new Energy Credit since biomass will not be eligible for Renewable Energy Credits.

S 447 (Helming)

This bill would amend the Environmental Conservation Law to allow the construction and use, without the requirement of a permit, of temporary skidder trails and machinery, using current

best management practices as outlined by USDA Forest Service, when selectively harvesting timber within regulated wetlands. Senator Helming's staff indicates that this bill is to try and instigate a conversation with DEC regarding the issuance of guidance for forest practices in and around wetlands.

This legislation was re-introduced in 2019 by Senator Helming but does not have a Same As bill in the Assembly for 2019. ESFPA submitted a Memorandum of Support on 2/5/19. The bill has been referred to the Senate Environmental Conservation Committee and may not move without some support from a majority member.

Memorandum of Opposition (11)

A 663 (Rosenthal)/S 5801 (Sepulveda)

This legislation would amend the Agriculture and Markets Law and extend the coverage of the felony animal cruelty law to cover wildlife. Since the passage of the felony animal cruelty statute, there have been a number of egregious cases in which wild animals have been captured and tortured. This bill would allow these cases to be prosecuted under the felony animal cruelty statute.

The legislation does make it clear that in no way would this change affect the lawful hunting or trapping licensed by the Department of Environmental Conservation or the exercise of activities deemed to be sound agricultural practices. The proposed law does not, however, extend these exemptions to sound silviculture practices on non-farm land.

ESFPA filed an original Memorandum of Opposition to A 663 on 3/20/19. We have been in contact with Assemblywoman Rosenthal's staff and they appear amenable to exempting forest management and timber harvesting.

3/19/19 Reported to Codes – ESFPA has been trying to amend with Assemblywoman Rosenthal's staff person Lauren Schuster but nothing yet.

5/15/19 Senator Sepulveda filed S 5801 and referred to Senate Domestic Animal Welfare Committee.

6/4/19 ESFPA refiled the Memorandum of Opposition as well as language to amend which would make this acceptable to us.

A 820 (Glick)/S 985 (Breslin)

Requires forest management plans, subject to the approval of the department of environmental conservation, for certain lands subject to a conservation easement purchased by the state and forbids clear-cutting on such lands without such forest management plan; increases the jurisdiction of the Adirondack park agency over clear-cutting.

This legislation was re-introduced by the sponsors at the urging of the Adirondack Council. ESFPA strongly opposes this legislation and is submitting a Memorandum of Opposition once the Legislators return from their break. ESFPA has met with Senator Breslin's staff at FAD and they assured us that this bill continues to be legislation "intended to stir conversation". We will be

meeting with Assemblywoman Glick's staff to see what their intentions are. The bills remain in their respective Environmental Conservation Committees.

S 985 was reported to Committee on 1/9/19 and A 820 was reported to Committee on 1/11/19.

1/22/19 ESFPA submitted a Memorandum of Opposition.

It is unclear if these bills will move this session.

A 1261 (Bronson)/S 1947 (Ramos) A 1261 on Third Reading in Assembly

This legislation relates to the imposition of "prevailing wage" on many private projects receiving public funding receiving all or some financial support from State or local entities in the form of loans, grants, tax abatements or other governmental assistance and in some instances permits and approvals. These bills would significantly increase the labor costs and overall project costs subject to this new mandate. The "prevailing wage" as calculated by the State Department of Labor can be significantly higher than typical wages in local labor markets. The bill expands significantly the types of projects deemed "public works" and the public entities to which prevailing wage would apply.

3/16/19 ESFPA filed a Memorandum of Opposition on 3/16/19 along with strong memos from BCNY and NYFB. This legislation was included in the Senate Budget amendments but did not make it in the final enacted budget.

As of 3/7/19 A 1261 has remained on Third Reading in the Assembly.

A 1813 (Abananti)

Authorizes local governments to adopt a local law or ordinance requiring property owners to replace trees removed from their property. ESFPA wrote a Memorandum of Opposition regarding this bill on 4/15/19. The bill has not been reported out of Committee.

A 2064 (Englebright)/S 2072 (Carlucci) – Passed Both Houses

This legislation is a Concurrent Resolution of the Senate and Assembly to amend Article I of the State Constitution (Bill of Rights) to include a right to clean air and water and a healthful environment. The sponsors claim that several other states including Pennsylvania, Hawaii, Massachusetts and Montana have constitutional protections in place to ensure access to clean air and water. This proposed constitutional amendment would follow those models and ensure that clean air and water are treated as fundamental rights for New Yorkers and to protect the overall health of the people and the environment.

Article XIV of the NYS Constitution (Conservation) already:

§ 4. The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and

regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.

It seems redundant to make this change to the “Bill of Rights” in Article I. In addition, the NYS voters this fall will be voting on whether to convene a Constitutional Convention. In addition, this amendment would establish a “self-executing right” in the New York State Constitution providing the each person shall have the right to clean air and water, and a healthful environment. A self-executing provision creates a legally enforceable right and standing to every citizen of the State.

A 6279 passed the Assembly in 2018 as a one-house bill since S 5287 (Carlucci) never was reported out of the Senate Judiciary Committee. With Senator Carlucci now in the majority this legislation may have more life. If passed in 2019 it would need to be passed a second time in 2020 with the earliest appearance on the statewide ballot in November 2019.

4/17/19 ESFPA filed a Memorandum of Opposition to this legislation. BCNYS has objected to this in the past. BCNYS has significant concerns over the “self-executing right” provisions.

4/30/19 S 2072 Passed both Houses as part of Earth Day package.

6/24/19 filed with the Secretary of State where if re-passed in 2021 this proposed Constitutional Amendment could be put forth to the voters in November 2021.

A 2477 (Englebright)/S 5343 (Kaminsky) Veto 193

These bills relate to the use of the use of the organophosphate pesticide chlorpyrifos, specifically prohibiting “any person to use chlorpyrifos”. Chlorpyrifos is an organophosphate insecticide, acaricide and miticide used primarily to control foliage and soil-borne insect pests on a variety of food and feed crops.

ESFPA is not opposed to addressing the concerns or potential environmental or health threats related to the use of chlorpyrifos, but we are concerned with the unilateral legislative prohibition of any pesticide (and in New York many herbicides) which are already strictly controlled by the U.S. Environmental Protection Agency (EPA) and New York State Department of Environmental Conservation (DEC). This is one of several bill that are before the legislature this session in both houses (see also A 6899/S 225 regarding glyphosate).

ESFPA filed a Memorandum of Opposition to these bills on 3/16/19 at the urging of NYFB. This and related Legislative efforts to limit or prohibit the acceptable use of pesticides and herbicides could set a precedent that would undermine rigorous, scientific methods of regulating pesticides by state and federal agencies.

These bills were amended in March (A 2477-A/S 2156-A) to reflect a change in timing of their effective date.

4/30/19 S 2156-A and S 5343 Passed Both Houses as part of Earth Day package. This bill was filed with the Secretary of State on 6/24/19 and if passed again in 2020 could be put forth to the voters on the November ballot as a Constitutional Proposition.

8/26/19 ESFPA signed onto NYFB letter to the Governor recommending Veto

8/27/19 ESFPA sent Memorandum to Veto to the Governor. The Bill awaits Governor's action to Veto or Sign.

12/13/19 the Governor issued Veto 193, the Governor stood up for the Department of Environmental Conservation's (DEC) regulatory authority to govern the use of pesticides in the state and did not cede power to the legislature to do so. While the Governor did take the additional step of directing the DEC to phase out the use of this particular product through the agency's regulatory process, the Governor plans on funding and working to identify alternatives for use as a replacement. DEC's pesticide registry, as well as the U. S. Environmental Protection Agency's registry, and their respective regulatory process are rigorous, scientific programs regulating the use, application and sale of pesticides and related substances. Collectively, we spent an enormous amount of time working on this bill, even though this particular chemical is not used in forests, it posed a significant precedent that could have led to a flood of like prohibitions. As it went through the legislature and communicating with the Governor's office after its passage we stressed the benefit of a rigorous regulatory process and the dangerous precedent this could have in circumventing a process that has and continues to work well. There haven't been a lot of bright spots this year in Albany, but this is one of them. It is among a few positives we could have hoped for in this political environment.

A 3658 (Englebright)/S 5576 (Mayer)

This bill would amend the definition of freshwater wetlands; extend the Department of Environmental Conservation's jurisdiction to wetlands over 1 acre; revise the process for designation and notification of draft wetland areas; and, expand wetland regulatory jurisdiction to the subdivision of property.

ESFPA is not opposed to updating the procedures and scope of regulating wetlands in New York State but it should be done in a more comprehensive fashion reflecting the science, current and dynamic nature of wetland systems, and with an aim toward streamlining wetlands regulation which presently can have as many as three different levels of government regulating the same wetland with varying criteria and standards to be met.

ESFPA submitted a Memorandum of Opposition to A 3658 on 3/12/19. The bill remained a one-house bill but has reported from the Assembly Environmental Conservation Committee to Ways and Means Committee on 3/12/19. The bill has a history of passing the Assembly.

5/7/19 Senator Mayer introduced S 5576 as a Same As Bill.

6/4/19 ESFPA refiled an amended Memorandum of Objection.

At the close of Session the bill remained on Third Reading in the Assembly

A 3876 (Englebright)/S 2992 (Kaminsky)

This legislation would enact the Climate & Community Protection Act (CCPA) and set very ambitious Greenhouse Gas emission limits to reach 0% of 1990 emission levels by 2050. ESFPA is not opposed to addressing climate change which is probably the biggest and most complex environmental, economic and social issue affecting the planet let alone New Yorkers. Addressing climate change, however, should be done in a comprehensive fashion reflecting the best approaches for mitigation, adaptation, regulation and investment throughout New York.

ESFPA submitted a Memorandum of Opposition to this legislation on 2/4/19 and testified before the Senate Environmental Conservation Committee on 2/12/19. We are working to see if this or the Governor's Climate Initiative Legislation included in the 2019 Executive Budget can address concerns we have and incorporate certain principles that we would like to see in any climate legislation.

These bills were filed with their respective Environmental Conservation Committees on 1/31/19. On 2/5/19 A. 3876 was reported to Assembly Ways & Means. The Governor attempted to include Climate legislation in the Executive Budget but both the Senate and Assembly omitted the Governor's Climate Leadership Act in the budget and climate legislation was not included in the enacted budget.

5/17/19 ESFPA testified at the Assembly Environmental Conservation Committee in NYC. Chairman Englebright assured us that he wanted our manufacturers to stay in NY.

The Environmental NGOs continue to try and negotiate amendments to the CCPA to reflect zero emission electric generation by 2040 and a pathway to net carbon zero for all other sectors.

6/18/19 A. 8429 (Englebright)/S. 6599 (Kaminsky) known as the Climate Leadership & Community Protection Act (CLCPA) was introduced at Midnight and S. 6599 was passed by the Senate and Assembly on 6/19/19. On 7/18/19 the Governor signed S. 6599 as Chapter 106, Laws of 2019.

A 4508-A (Crespo)/S 3314 (Sanders) Third Reading in both houses

This bill seeks to protect workers from employers and supervisors that negligently fail to comply with safety protocols by amending the penal code to create new offenses and substantially increasing the fines and penalties (misdemeanor to felony) that can be imposed upon a corporate defendant convicted of certain crimes.

This bill would reinforce the purpose of the OSH Act by amending the penal code to include "endangering the welfare of the worker in the third degree", established as a class A misdemeanor, "endangering the welfare of the worker in the second degree", a class E felony, and "endangering the welfare of the worker in the first degree", a class D felony.

ESFPA contacted BCNY and they have not taken a position. BCNY spoke to Senator Sanders' office to see if they would hold it. They won't but are open to entertaining amendments. BCNY is reaching out to contractors as well.

A 4508 was introduced on 2/4/19 and advanced to Third Reading on 2/21/19. S 3314 was introduced on 2/5/19 and is on the Committee agenda for 3/4/19.

5/7/19 ESFPA Memorandum of Opposition submitted.

6/3/19 A 4508 was amended to further extend liability to supervisors and co-workers. ESFPA contacted Lev Ginsberg on 6/4/19 to see what they are doing.

A 6899 (Steck)/S 225 Hoylman

This legislation relates to the use of the herbicide glyphosate, specifically “No person, firm, partnership, association, limited liability company or corporation shall distribute, sell, offer for sale or use glyphosate or any products containing glyphosate within New York State.” ESFPA is not opposed to addressing the concerns or potential environmental or health threats related to the use of glyphosate, but we are concerned with the unilateral legislative prohibition of any herbicide (and in New York many pesticides) which are already strictly controlled by the U.S. Environmental Protection Agency (EPA) and New York State Department of Environmental Conservation (DEC). New York is one of a few states has an extensive scientific product review process that compliments and in some instances exceeds the same type of process used by EPA.

Assemblyman Steck came in late introducing this Same As Bill on March 25th. For now both bills are in their respective Environmental Conservation Committees.

4/17/19 ESFPA filed a Memorandum of Opposition.

A 8349 (Ryan)/S 5612 (Harckham) – Passed Senate

This legislation would reclassify class C waterways as streams for the purpose of protection. Currently class C streams are regulated by DEC and have a best usage classification for fishing. Class C waters are suitable for fishing and primary and secondary contact recreation, although certain naturally occurring factors may limit the use for these purposes. Class C waters can, by regulation, can have an additional T classification added to them which does add them to the Protection of Waters Regulatory Program.

Extending the added requirements to all class C streams by statute will add every class C stream to the Protection of Waters Regulatory Program and hinder forest land owner’s ability to manage their forests and undertake responsible timber harvests. This would add hundreds of miles of marginal streams to this regulatory program and impose windows of limitations on forest management and timber harvesting. By some calculations these windows could span 9 months from October through June.

6/15/19 S 5612 was amended to eliminate Class D streams from the bill.

6/18/19 ESFPA refilled its Memorandum of Opposition.

6/19/19 S 5612-A passed the Senate but was left on Third Reading in the Assembly at the close of Session.

Bills that ESFPA has yet to take a position on (27)

A 39 (Cahill)/S 3608 (Parker)

This legislation would establish a tax on “carbon-based fuels” which includes coal, natural gas, renewable biomass, petroleum products, and any other product that contains carbon and emits carbon dioxide, methane, nitrous oxide, or other greenhouse gases when combusted, that are used for fuel, heating, cooling, or industrial processes, which processes shall include electricity generation.

Critical to monitor this as to how "renewable biomass" may be treated or dropped from this legislation. As drafted biomass is a "carbon-based fuel". Question is how the carbon dioxide equivalency is calculated and considers sequestration. How would this look at biomass as a "low carbon fuel"?

A 90 (Rosenthal L)/S 1477 Hoylman

This legislation is aimed at reducing plastic pollution by prohibiting certain restaurants and food service establishments from providing single-use plastic straws with drinks unless customers request one. The law would allow the use of non-plastic straws as an alternative including those made from paper, sugar cane or bamboo.

A 365 (Paulin)/S 2266 (Comrie)

These bills would require 16 large state public authorities, listed in the bill, to meet certain energy conservation targets, and to prepare and implement energy conservation and waste management plans. This proposal is targeted at making structures and waste management of public authorities more energy efficient. Hinman Straub has flagged this legislation for AF&PA but there has been no indication from AF&PA that they are concerned.

4/8/19 S 2266 was referred to Senate Finance where it sits.

4/22/19 -- Reached out to Matt again noting that we would likely comment regarding the bias against biomass. Trying to see where AF&PA is.

A 436 (Paulin)/S 5739 (Kaminsky) – Passed Senate

This legislation would amend the Town and Village Law in regards to requiring towns and villages to accommodate renewable energy structures under their land use regulations. When a town or village creates zoning and planning regulations, they are created in accordance with a comprehensive plan and with consideration to several factors. Currently, among such factors are "safety from fire, flood, panic and other dangers. In order to encourage the use of alternative sources of energy, the proposed legislation adds the accommodation of "solar thermal, photovoltaics, wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, farm waste electric generating equipment, and fuel cells" to the list of factors that a town or village shall consider when creating its zoning and planning regulations.

This language does not include biomass related renewable energy structures (e.g. external storage). ESFPA commented on this legislation in 2017-18 (A 34) but Assemblywoman Paulin would not amend it to include biomass. Her staff suggested get it passed and amend later.

Senator Kaminsky sponsored this legislation late in 2019 and we should approach him about amendments to include biomass.

A 593 (Rosenthal L) – No Same As

This bill establishes a one-year research program through the New York State Department of Health to determine the extent to which glyphosate and its byproduct aminomethylphosphonic acid (AMPA) pose health risks to the general public.

1/9/19 referred to Assembly Health Committee.

This legislation is one of several bills in the legislature this year which could lead to the regulation or banning of glyphosate. See also:

A 732-A (Rosenthal L)/S 6502 (Serrano) – prohibiting the use of glyphosate and products containing Glyphosate in certain parks, playgrounds and picnic areas.

1/9/19 referred to Assembly Environmental Conservation Committee.

4/25/19 S 182 was amended to S 182-A making it a Same As bill to A 732.

5/31/19 A 732 amended to change prohibition use of glyphosate to only State properties. Now a same as to S 6502 (Serrano). Leaving A-182-A with no Same As.

S 223 (Hoylman)/A 6877 (Steck) – Instituting a moratorium on the distribution, sale or use of Glyphosate until a task force completes a study regarding the safety, alternatives and use of such compound. 1/9/19 referred to Senate Environmental Conservation Committee. On 3/25/19 Assemblyman Steck introduced A 6877 as a companion bill.

Several ESFPA members have raised concern about these proposals particularly related to the treatment of beach bark disease. ESFPA will be drafting position statements on each of these proposals and sharing among the Executive Committee before sending out.

On 2/26/19 ESFPA raised this at the Invasive Species Advisory Committee and this legislation as well as some other pesticide and fungicide bills has many stakeholders worried. The ISAC is going to write to the Invasive Species Council and advise them of the potential unintended consequences of much of this legislation. 3/18/19 final draft letter approved by ISAC to be sent to ISC. On 3/27/19 he ISC met but did not have a quorum so no action was taken.

A 732 (Rosenthal L)/S 6502 (Serrano)

This legislation would ban the use of glyphosate on state property. Earlier versions of this legislation would have applied to more public properties and had a broader ban but Senator Serrano (S 182) amended her bill to match Assemblywoman Rosenthal's limited to state property.

Hopefully the Governor's veto of the Chlorophyllis legislation puts a stall on these related bills. It is also likely that DEC would oppose an outright ban on state property since glyphosate is a preferred treatment for HWA and other invasive pests.

A 1642 (Hunter) – No Same As

An act to amend the environmental conservation law, in relation to requiring manufacturers of consumer goods to accept for collection, handling and recycling or reuse, consumer goods waste for which it is the manufacturer. This legislation provides a pretty open “Extended Producer Responsibility” (EPR) of manufacturers of not defined products. AF&PA has raised concerns that this could apply to paper manufacturers.

In conversations with Assemblywoman Hunter she intended this legislation to get at white metal, furniture and electronics which is often dropped at the curb and not picked up.

ESFPA is seeking feedback from members as to how this may impact their products.

A 1779 (Peoples-Stokes)/ S 181 (Serrano) – Veto 136 (Tabled)

These bills require the Department of Environmental Conservation (DEC) to publish a list of those areas in the State that are most adversely affected by existing environmental hazards. This legislation is drafted to follow existing state and federal laws and regulations on “environmental justice”. Generally these initiatives are aimed at eliminating further environmental degradation and impacts on urban populations which are more often poor and unable to address environmental impacts that affect their communities.

These bills seek to address this problem by requiring DEC to identify "high local environmental impact zones", which are defined as those areas of the State that are most adversely impacted by existing environmental hazards. The need for consideration of such cumulative impacts has been recognized at the federal level, where the EPA has established a principle of "fair treatment" in environmental decision making, as mandated by President Clinton's 1994 Executive Order on Environmental Justice. This bill will help to ensure that New York State similarly recognizes the existence of such overburdened communities, and that future siting decisions are made only after considering the potential adverse impacts on these communities.

A 1862 Passed the Assembly in 2017 and 2018 but died in the Senate both times. With Senator Serrano now in the majority this legislation may well pass both houses.

4/30/19 A 17179 Passed Both Houses as part of the Earth Day package.

11/20/19 A 1779 was Vetoed by the Governor (Veto 136) but Tabled. Veto message cited that in 2010 and many of the issues identified with the bill remained, including the redundancy to other DEC programs, the lack of access to information required by the bill, and the potential fiscal impact on DEC.

12/13/19 Governor issued Veto 136, This bill was vetoed in 2010 and many of the issues identified with the previous bill, including the redundancy to other DEC programs, the lack of access to information required by the bill, and the potential fiscal impact on DEC, have not been addressed. The Governor also raised discretionary problems with the bill as well as costs to the Department to implement.

A 2422 (Englebright) – No Same As

This proposed legislation would amend the Freshwater Wetlands Act by strengthening the Department's jurisdiction to enforce against impacts in areas adjacent to such wetlands. New York's Tidal Wetlands Act includes this jurisdiction. In limiting activities landowners may take without a permit in areas adjacent to saltwater wetlands, the bill sponsor purports to recognize the essential connection between the wetland and its adjacent area and the need to limit adjacent area activities. In the 2005 Rockland County case of Bradley Corporate Park v. Crotty, the validity of DEC's order to restore adjacent areas of freshwater wetlands as well as the damaged wetland, was challenged because of the absence of the phrase "or area immediately adjacent thereto." Although the Appellate Division rejected the argument in that case, the current law should be clarified to remove any doubt about the extent of the Commissioner's power to obtain restoration of the wetlands damaged by illegal acts.

The Rockland County case conferred some jurisdiction adjacent to wetlands and this legislation would codify it. ESFPA will monitor this legislation to see if it gains a Senate sponsor on Same As legislation. So long as the wetland exemptions for silviculture do not get changed for freshwater wetlands we may not need to comment. Note that ESFPA has already commented on A. 3658 (Englebright) on expanded jurisdiction over freshwater wetlands.

A 2535 (Englebright) similar to **S 1096** (Hoylman)

Both of these proposed bills would prohibit the sale or distribution of paper goods containing the chemical Bisphenol A. Bisphenol-A (BPA) is an estrogen-mimicking endocrine disruptor chemical used in the production of epoxy resins, polycarbonate plastics and paper. A. 2535 is aimed at prohibiting the sale of liquid and food containers containing bisphenol where S 1096 is aimed at the sale of thermal paper containing bisphenol. It is probably just a matter of time until these legislators collaborate on a broader bill.

AF&PA has raised concerns on this legislation and while our paper manufacturers do not have bisphenol in their products, ESFPA will coordinate with AF&PA on a position statement on these bills. IP and Finch have indicated that this legislation would not affect their NY plants but can appreciate the "slippery slope".

A 4077 (Barrett)/**S 5196** (Kaminsky) **S 5196 Passed Senate**

This legislation would authorize the Commissioner of DEC to protect endangered and threatened species that still require such protection in New York in the event that the Department of Interior removes its endangered or threatened designation. Species which may be at risk of losing protection within New York State as a result of action by the U.S. Secretary of the Interior would be allowed to stay on NY's list following the Commissioner's own investigation.

4/15/19 S 5196 was introduced as a Same As bill to A 4077.

6/4/19 S 5196 was advanced to Third Reading

10/28/19 Met with Ashley Daughter, Jessica Fowler and Don Boyajian and mentioned this bill.

11/20/19 emailed with Dan Rosenblatt who had concerns about the bill.

A 4454 (Cusick)/ **S 3273** (Lanza) – **A 4454 Passed Assembly**

This legislation would require the notification of neighboring landowners where certain development is proposed in the regulatory area of freshwater or tidal wetlands within New York City. As drafted the Bills only apply to permits within the City of New York but with the inclusion of freshwater wetlands this could set a precedent that may spread elsewhere in New York.

2/5/19 - S 3273 introduced as Same As Bill

6/13/19 – A 4454 Passed Assembly and referred to Senate Rules Committee

A 4739 (Fahey)/S 2000 (Hoylman) Passed Both Houses

The chemicals PFOA and PFOS have come under scrutiny in New York over the last several years due to water contamination cases. While existing federal and state efforts to regulate PFOA and PFOS are critical, there is a troubling gap in these efforts. PFOA and PFOS are part of a class of man-made chemicals called PFAS, or perfluoroalkyl and polyfluoroalkyl chemicals. Regulations on PFOA and PFOS do not address less common chemicals in the PFAS family that could pose similar and unknown human health impacts, not to mention the potential for new PFAS chemicals to be developed in the future.

This proposed legislation would ban PFAS chemicals in food packaging containers used in New York. Chemicals that are similar in chemical makeup to chemicals we know to be harmful should not be automatically approved for use, because it is likely they also lead to harmful health impacts. Rather, we should utilize a precautionary principle and prohibit the use of all PFAS chemicals in food packaging.

AF&PA has raised concerns on this legislation and while our paper manufacturers do not have bisphenol in their products, ESFPA will coordinate with AF&PA on a position statement on these bills. It should be noted that these chemicals are what was discovered in drinking water in Hoosick Falls NY.

6/3/19 A 4739 was amended to simplify language but strengthen the ban on the substance in food packaging.

6/19/19 S A 4739-A Passed Both Houses. Bill awaiting Governor's action.

A 5262 (Woerner)/S 4003 (Parker)

Establishes the low carbon fuel standard of 2019; such standard is intended to reduce greenhouse gas emissions from the transportation sector by 20% by 2030, with further reductions to be implemented based upon advances in technology.

Although New York State has adopted the California standards for vehicle emissions and is making strides to promote electrification in certain transportation sectors, these efforts do not go far enough and do not promote new, innovative technologies that take into account the full lifecycle of transportation fuels. One of the shining examples from the California low carbon fuel standard is the promotion of bio methane, also known as renewable natural gas (RNG), as a transportation fuel. This enables the agriculture industry to produce bio methane through anaerobic digestion and match that production with an off take partner to fuel vehicles, particularly the large tractor-trailers that continue to drive our economy. Those vehicles, in turn,

are using the Cummins Westport Near Zero engine, produced in Jamestown, New York. Together, these technologies reduce GHG emissions by approximately 125%. This is one of the rare examples of how an innovative technology can be carbon net negative.

See also S 4542 (Parker) which provides tax credits for biomethane.

5/30/19 A 5262 was amended to reflect detailed language on life cycle assessments. Need to follow up with Assembly Member Woerner as to why.

9/25/19 S 4003 amended to be Same As to A 5262-A

11/20/19 ESFPA signed on to the League of Conservation Voters Low Carbon Fuel Standard letter to the Governor for him to include a LCFS in his State of the State Message.

A 6200 (Englebright)/S 5476 (Martinez) S 5476 Passed Senate

These bills would amend the environmental conservation law, in relation to increasing certain penalties relating to endangered and special species, species of special concern and illegal ivory articles. Doubling a take fine from \$1,000 to \$2,000 plus doubling multiple specimen fines.

5/2/19 Martinez introduced the Same As bill in the Senate S 5476.

6/3/19 S 5476 on Second Reading

6/4/19 on Third Reading

6/11/19 Passed Senate

A 6600 (Englebright)/S 5098 (Martinez) – Chapter 651 Laws of 2019

This legislation would allow for designating certain species as vulnerable species and prohibiting the sale of articles made from such vulnerable species; and to require the department of environmental conservation to designate the giraffe as a vulnerable species. Bill appears to be, but may not be limited to, designating non-native global species (e.g. giraffe). Less with take and more with trade.

4/30/19 A 6600 passed Both Houses as part of the Legislative Earth Day package.

12/13/19 signed Chapter 651 Laws of 2019. In his approval message the Governor stated that while he agreed with the purpose of the bill, which will allow the Department to prohibit the sale of articles made from species that are not currently listed as endangered or threatened. However, the existing bill contained criteria for determining whether a species would qualify as vulnerable that would have limited the Department's discretion. The Executive and the Legislature have agreed on a **chapter amendment** that will modify the language in the original bill to allow the Department to designate a species as vulnerable if the decline of a species, if unreversed, would lead to its listing as an endangered or threatened species in the foreseeable future.

A 6877 (Steck)/S 223 (Hoylman)

This legislation would institute a moratorium on the distribution of glyphosate. This is one of five bills on glyphosate. Given the Governor's Veto of the Clorphyphoris bill we are hoping these single use bans on pesticides and herbicides will not advance.

A 7403 (Rosenthal)/S 2066 (Serrano)

These bills would prohibit the aerial and ground application of malathion and certain pyrethroid-based insecticides. Given the Governor's Veto of the Clorphyphoris bill we are hoping these single use bans on pesticides and herbicides will not advance.

A 7639 (Englebright)/S 5816 (Hoylman)

These bills would enact the "Birds & Bees Protection Act". The idea of this bill is to prohibit the use of certain active ingredients in pesticides that are known to cause harm to pollinators, and to reduce bird mortality from collisions with windmills and towers. This bill would prohibit the sale or offer for sale in the State of any pesticide containing neonicotinoids, including clothianidin, imidacloprid, thiamethoxam, dinotefuran, acetamiprid, thiacloprid, nithiazine, or fipronil. The bill would also require the installation of lights on towers and direct Cornell University to work on educational information to mitigate impacts on birds from windmills.

5/31/19 NYFB filed a Memorandum of Objection on this bill regarding the impact on the use of neonicotinoids.

6/11/19 A 7639 was amended without corresponding changes to S 5816 so is now a one-house bill. Amendments expanded exemptions including "trunk injections" for invasive species.

A 8018 (Gunther)/ S 1677 (Skoufis)

This legislation relates to subjecting certain State lands to real property taxation. ESFPA supports legislation which would provide for the payment of real property taxes on certain State lands, but we would prefer a comprehensive reform to State land tax policy rather than the hodge-podge treatment under current State law.

A 8098 (Barrett)/S 4876 (Metzger) S 4876-A Passed Both Houses

This proposed legislation would amend the Environmental Conservation Law which requires that the Commissioner of the Department of Environmental Conservation (DEC) add the Asian longhorned tick to the state invasive species list and include the species in the comprehensive plan for invasive species management. The commissioner of the DEC, in consultation with the commissioner of the Department of Agriculture and Markets and Department of Health shall include information on the Asian longhorned tick on statewide databases and clearinghouses that incorporates existing data from agencies and organizations in the state, as well as from nearby states, provinces, Canada, and the federal government.

ESFPA has inquired with the Invasive Species Advisory Council and DEC as to their thoughts/concerns on this legislation. On 2/26/19 the ISAC heard from several people on this but did not take any action. They worry about stepping on the jurisdiction of DOH.

3/28/19 Senator Metzger introduced S 4876 as a Same As bill.

6/3/19 S 4876 on Third Reading

6/18/19 S 4876-A passed both Houses. Awaiting Governor's action for Veto or signature.

A 8123 (Englebright)/S 6484 (Kaminsky)

The purpose of this bill is to minimize the ecological impacts of subdivisions in the Adirondack Park. This bill would require Adirondack Park residential subdivisions that meet certain size thresholds to comply with certain conservation subdivision design criteria including:

- development of an ecological preservation and forest stewardship plan;
- preservation, by deed restriction or other permanent legal means, of at least 75 percent of the tract in contiguous and intact open space; and
- require the Adirondack Park Agency to promulgate rules and regulations implementing conservation subdivision criteria.

In the 2017-18 legislative session this bill was introduced as A 5451 and ESFPA was invited to participate in a stakeholder group to try and achieve consensus on amendments necessary to make the bill palatable to all stakeholders. This latest draft allegedly addresses those concerns.

6/3/19 Introduced and referred to Assembly Environmental Conservation.

6/13/19 Senator Kaminsky introduced S 6484 as a Same As Bill.

6/13/19 ESFPA signed memo of support in recognition of amendments ensuring forestry, agriculture and recreation on residual open space. This may be concern to some members.

10/28/19 Met with Ashley Daughter, Jessica Fowler and Don Boyajian and mentioned we had signed off on this bill relative to impacts on silviculture and forest management but that the bill still had design issues related to land use and TDR issues.

S 1074 (Hoylman)

This bill would prohibit the use of atrazine, metalaxyl or neonicotinoids class of chemicals. Given the Governor's Veto of the Clorphyphoris bill we are hoping these single use bans on pesticides and herbicides will not advance.

S 1431 (Ritchie) - No Same As

This proposal would amend the Public Service Law, the public authorities law, and the environmental conservation law, in relation to biomass-fired electric generating facilities subject to the regional greenhouse gas initiative and the CO2 budget trading program. This legislation is being sought by ReEnergy regarding fees charged on their Black River facility. ReEnergy is working with Assemblyman Blankenbush and Senator Cusick's staff (Sean Ewart) on how best to pursue this legislation. ESFPA will hold comments until ReEnergy finishes those conversations.

S 3616 (Parker)

This legislation would enact the Climate & Community Investment Act (CCIA), which would impose fees on carbon based fuels. It is not clear how this legislation would relate to the recently enacted CLCPA but it is much broader on how revenues raised from carbon fees would be distributed to communities and programs.

S 4542 (Parker)

This proposal would amend the Public Authorities Law, the state finance law and the tax law, in relation to development of biomethane as a fuel alternative and creating the biomethane fuel incentive fund. Renewable Natural Gas, also known as RNG or biomethane, is chemically identical to fossil natural gas but much cleaner, and the first commercially viable, sustainable transportation fuel that can greatly reduce consumption of diesel fuel. ESFPA would likely support this as a low-grade market for biomass. See also A 5262 (Woerner)/S 4003 (Parker) on low carbon fuel standard and biomethane.