

4883

2013-2014 Regular Sessions

I N S E N A T E

April 30, 2013

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to enact chapter 11-D of the consolidated laws, to be the cultural and heritage resources law, in relation to the preservation, enhancement and promotion of the state's cultural and heritage assets

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and declaration of purpose. The legis-
2 lature determines that the state's cultural and heritage assets are
3 major educational, inspirational and economic resources that should be
4 preserved, enhanced and fully promoted. The state's cultural and herit-
5 age assets are world class destinations for visitors from around the
6 world and should be promoted as such. Having the cultural and heritage
7 assets spread among several state agencies and departments has been
8 detrimental to the full utilization of these assets. Therefore, the
9 legislature finds that streamlining and combining these assets into one
10 agency will help each of the entities achieve its full mission for the
11 people of the state in a more productive manner.

12 It is important that an integration to a single coordinated state
13 office be effected at once. It is recognized that this change must be
14 progressive, but expeditious. The first step is the creation of an
15 office of cultural and heritage resources. This act presumes that addi-
16 tional well-considered steps will be taken to affect the overall
17 cultural and heritage resources program envisioned.

18 S 2. Chapter 11-D of the consolidated laws, constituting the cultural
19 and heritage resources law, is enacted to read as follows:

20 CHAPTER 11-D OF THE CONSOLIDATED LAWS

21 CULTURAL AND HERITAGE RESOURCES LAW

22 Article 1. Short title; definitions. SS 1-2

23 2. Powers, duties and jurisdiction of the office of cultural

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

LBD09721-01-3

- 1 and heritage resources. SS 10-17
2 3. Transfer of functions; interim functions;
3 codification. SS 20-30
4 4. Cultural and heritage resources board. S 40

ARTICLE 1

SHORT TITLE; DEFINITIONS

7 Section 1. Short title.

8 2. Definitions.

9 S 1. Short title. This chapter shall be known and may be cited as the
10 "cultural and heritage resources law".

11 S 2. Definitions. Whenever used in this chapter, unless a different
12 meaning clearly appears from the context:

13 1. "Board" means the cultural and heritage resources board.

14 2. "Director" means the director of cultural and heritage resources.

15 3. "Heritage area" means a definable urban or regional area of public
16 and private uses ranging in size from a portion of a municipality to a
17 regional area with a special coherence, such area being distinguished by
18 physical and cultural resources (natural and/or man made including
19 waterways, architecture or artifacts reflecting a period of style or
20 cultural heritage) which play a vital role in the life of the community
21 and/or region, and contribute through interpretive, educational and
22 recreational use to the public. A heritage area may include traditional
23 parks (pleasure grounds set apart for recreation of the public) and
24 historic places or property on the national or state register of histor-
25 ic places, but the term heritage area shall not be deemed to mean a park
26 or historic place as those terms are used in other provisions of law
27 including those relating to alienation of park land and regulation of
28 public or private activities. Such other provisions of law shall contin-
29 ue to apply to the specific parks and historic places within a heritage
30 area. The term heritage area shall be deemed to mean and include areas
31 that have been previously designated as urban culture parks and heritage
32 corridors or other similar names applied to areas of special concern
33 fitting the definition of heritage area in this subdivision.

34 4. "Historic preservation" means the study, designation, protection,
35 restoration, rehabilitation and use of buildings, structures, historic
36 districts, areas, and sites significant in the history, architecture,
37 archeology or culture of this state, its communities or the nation.

38 5. "Office" means the office of cultural and heritage resources.

39 6. "Person" means any individual, public or private corporation, poli-
40 tical subdivision, government agency, department or bureau of the state,
41 municipality, industry, co-partnership, association, firm, trust, estate
42 or any other legal entity whatsoever.

ARTICLE 2

POWERS, DUTIES AND JURISDICTION OF THE OFFICE OF CULTURAL AND HERITAGE
RESOURCES

46 Section 10. Declaration of policy.

47 11. Office of cultural and heritage resources; director

48 12. Offices of the office.

49 13. Organization of office; officers and employees.

50 14. Functions, powers and duties of office and director.

51 15. General functions, powers and duties of the office and the
52 director.

53 16. Summary action.

54 17. Statewide cultural and heritage plan.

55 S 10. Declaration of policy. The protection and quality of the state's
56 natural and cultural resources is fundamental to our concern for the

1 quality of life. It is hereby declared to be the policy of this state to
2 conserve, improve, beneficially use and protect its cultural and herit-
3 age resources, in order to enhance the health, safety and welfare of the
4 people of the state and their overall economic and social well being.
5 It shall further be the policy of the state to improve and coordinate
6 the cultural and heritage plans, functions, powers and programs of the
7 state, in cooperation with the federal government, regions, local
8 governments, other public and private organizations and the concerned
9 individual, and to develop and manage the basic cultural and heritage
10 resources to the end that the state may fulfill its responsibility as
11 trustee of our cultural and heritage resources for the present and
12 future generations. It shall further be the policy of the state to
13 foster, promote, create and maintain conditions under which man and
14 nature can thrive in harmony with each other, and achieve social,
15 economic and technological progress for present and future generations
16 by:

17 1. assuring surroundings which are healthful and aesthetically pleas-
18 ing;

19 2. guaranteeing that the widest range of beneficial uses of cultural
20 and heritage resources are attained without risk to health or safety,
21 unnecessary degradation or other undesirable or unintended consequences;

22 3. promoting patterns of development and technology which minimize
23 adverse impact on our cultural and heritage resources;

24 4. preserving the unique qualities of special resources such as state
25 historic sites, state designated heritage areas, sites on the national
26 register of historic places, paintings, sculptures, and other artistic
27 creations, museums, gardens and performing arts venues; and

28 5. providing that care is taken for cultural and heritage resources
29 that are shared with the other states of the United States and with
30 Canada in the manner of a good neighbor.

31 S 11. Office of cultural and heritage resources; director. There shall
32 be in the executive branch an office of cultural and heritage resources.
33 The head of the office shall be the director of cultural and heritage
34 resources, who shall be appointed by the governor, by and with the
35 advice and consent of the senate, and hold office at the pleasure of the
36 governor by whom he or she was appointed and until his or her successor
37 is appointed and has qualified.

38 S 12. Offices of the office. The principal office of the office shall
39 be in the county of Albany.

40 S 13. Organization of office; officers and employees. 1. The director
41 may, from time to time, create, abolish, transfer and consolidate divi-
42 sions, bureaus, field offices and other units within the office, as he
43 or she may determine necessary for the efficient operation of the
44 office, subject to the approval of the director of the budget.

45 2. The director may appoint such deputies, directors, assistants, and
46 other officers and employees as may be needed for the performance of his
47 or her duties, and may prescribe their powers and duties and fix their
48 compensation within the amounts appropriated therefor, subject to the
49 approval of the director of the budget.

50 S 14. Functions, powers and duties of office and director. It shall be
51 the responsibility of the office, in accordance with such provisions and
52 limitations as may be elsewhere set forth in law, by and through the
53 director to carry out the cultural and heritage resources policy of the
54 state set forth in section ten of this article. In so doing, the direc-
55 tor, shall have power to:

1 1. coordinate and develop policies, planning and programs related to
2 the cultural and heritage resources of the state and regions thereof;

3 2. promote and coordinate management of cultural and heritage
4 resources to assure their protection, enhancement, provision, allocation
5 and balanced utilization consistent with the environmental policy of the
6 state;

7 3. assure the preservation and enhancement of natural beauty and man-
8 made scenic and cultural landscape qualities;

9 4. undertake an extensive public information and education program to
10 inform and involve other public and private organizations and groups and
11 the general public in the commitment to the principles and practices of
12 cultural and heritage resources management and develop programs for the
13 teaching by others of such principles and practices;

14 5. cooperate with the executive, legislative and planning authorities
15 of the United States, neighboring states and their municipalities, and
16 the Dominion of Canada in furtherance of the policy of this state as set
17 forth in section ten of this article; and

18 6. exercise and perform such other functions, powers and duties as
19 shall have been or may be from time to time conveyed or imposed by law,
20 including, but not limited to, all the functions, powers and duties
21 assigned and transferred to the office.

22 S 15. General functions, powers and duties of the office and the
23 director. To further assist in carrying out the policy of this state as
24 provided in this chapter, the director shall be authorized to:

25 1. with the advice and approval of the board, adopt, amend or repeal
26 standards, criteria and those rules and regulations having the force and
27 effect of standards and criteria to carry out the purposes and
28 provisions of this chapter;

29 2. enter into contracts with any person to do all things necessary or
30 convenient to carry out the functions, powers and duties of the office;

31 3. review and appraise programs and activities of state departments
32 and agencies in light of the policy set forth in section ten of this
33 article for the purpose of determining the extent to which such programs
34 and activities are contributing to the achievement of such policy and to
35 make recommendations to such departments and agencies with respect ther-
36 eto, including but not limited to, environmental guidelines for their
37 use;

38 4. consult with and cooperate with:

39 a. officials of departments and agencies of the state having duties
40 and responsibilities concerning the environment;

41 b. officials and representatives of any public benefit corporation in
42 the state;

43 c. officials and representatives of the federal government, of other
44 states and of interstate agencies on problems affecting the environment
45 of this state; persons, organizations and groups, public and private,
46 utilizing, served by, interested in or concerned with the environment in
47 the state; and

48 d. appropriate committee or committees of the legislature;

49 5. appear and participate in proceedings before any federal regulatory
50 agency involving or affecting the purposes of the office;

51 6. undertake any studies, inquiries, surveys or analyses he or she may
52 deem relevant through the personnel of the office or in cooperation with
53 any public or private agencies, including educational, civic and
54 research organizations, colleges, universities, institutes or founda-
55 tions, for the accomplishment of the purposes of the office;

1 7. enter and inspect any property or premises for the purpose of
2 investigating either actual or suspected sources of pollution or contam-
3 ination or for the purpose of ascertaining compliance or noncompliance
4 with any law, rule or regulation which may be promulgated pursuant to
5 this article. Any information relating to secret processes or methods of
6 manufacture shall be kept confidential;

7 8. conduct investigations and hold hearings and compel the attendance
8 of witnesses and the production of accounts, books and documents by the
9 issuance of a subpoena;

10 9. advise and cooperate with municipal, county, regional and other
11 local agencies and officials within the state, to carry out the purposes
12 of this chapter;

13 10. act as the official agency of the state in all matters affecting
14 the purposes of the office under any federal laws, and as the official
15 agency of a county, town, city, village or authority in connection with
16 the grant or advance of any federal or other funds or credits to the
17 state or through the state to its local governing bodies for the
18 purposes of this chapter;

19 11. report from time to time to the governor and make an annual report
20 to the governor and the legislature;

21 12. formulate and execute contracts, keep accounts, record personnel
22 data, acquire real or personal property, including acquisition by
23 condemnation, appropriation, gift, grant, devise or bequest, adjust
24 claims, compile statistics and engage in research opportunities; all
25 according to the statutes or office orders and regulations in such cases
26 made and provided; and

27 13. adopt such rules, regulations and procedures as may be necessary,
28 convenient or desirable to effectuate the purposes of this chapter.

29 S 16. Summary action. Notwithstanding any inconsistent provision of
30 law, whenever the director finds, after investigation, that any person
31 is causing, engaging in or maintaining a condition or activity which, in
32 his or her judgment, presents an imminent danger to the health or
33 welfare of the people of the state or results in or is likely to result
34 in irreversible or irreparable damage to natural resources, and relates
35 to the prevention and abatement powers of the director and it therefore
36 appears to be prejudicial to the interests of the people of the state to
37 delay action until an opportunity for a hearing can be provided, the
38 director may, without prior hearing, order such person by notice, in
39 writing wherever practicable or in such other form as in the director's
40 judgment will reasonably notify such person whose practices are intended
41 to be proscribed, to discontinue, abate or alleviate such condition or
42 activity, and thereupon such person shall immediately discontinue, abate
43 or alleviate such condition or activity. As promptly as possible there-
44 after, not to exceed fifteen days, the director shall provide the person
45 an opportunity to be heard and to present proof that such condition or
46 activity does not violate the provisions of this subdivision. The direc-
47 tor shall adopt any other appropriate rules and regulations prescribing
48 the procedure to be followed in the issuance of such orders.

49 S 17. Statewide cultural and heritage plan. 1. The office shall
50 formulate and from time to time revise a statewide cultural and heritage
51 resources plan for the management and protection of the quality of the
52 cultural and heritage resources of the state, in furtherance of the
53 legislative policy and purposes expressed in this chapter.

54 2. The office shall submit such plan to the governor and to the legis-
55 lature on or before September first, two thousand fourteen, and there-
56 after shall submit periodic revisions of such plan to the governor and

1 to the legislature. Such plan and such revisions shall become effective
2 upon approval by the board and the governor, and shall serve thereafter
3 as a guide to the public.

4 3. In formulating such plan and any revisions thereof, the office
5 shall:

6 a. conduct one or more public hearings;

7 b. consult with and cooperate with:

8 (i) officials of departments and agencies of the state having duties
9 and responsibilities concerning the cultural and heritage resources;

10 (ii) officials and representatives of the federal government, of
11 neighboring states and of interstate agencies on problems affecting the
12 environment of this state;

13 (iii) officials and representatives of local government in the state;

14 (iv) officials and representatives of museums, art and cultural insti-
15 tutions, industry and education; and

16 (v) persons, organizations and groups, public or private, utilizing,
17 served by, interested in or concerned with the cultural and heritage
18 resources of the state; and

19 c. request and receive from any department, division, board, bureau,
20 commission or other agency of the state or any political subdivision
21 thereof, or any public authority such assistance and data as may be
22 necessary to enable the office to carry out its responsibilities under
23 this section.

24 ARTICLE 3

25 TRANSFER OF FUNCTIONS; INTERIM FUNCTIONS;

26 CODIFICATION

27 Section 20. Transfer of functions.

28 21. Transfer of employees.

29 22. Transfer of records.

30 23. Continuity of authority.

31 24. Completion of unfinished business.

32 25. Continuance of rules and regulations.

33 26. Terms occurring in laws, contracts and other documents.

34 27. Existing rights and remedies preserved.

35 28. Pending actions and proceedings.

36 29. Transfer of appropriations.

37 30. Codification of changes.

38 S 20. Transfer of functions. All functions, powers, duties and obli-
39 gations of the education department relating to the state museum, state
40 library, state archive and state science service; of the office of
41 parks, recreation and historic preservation relating to the state
42 historic preservation including historic sites, the state heritage area
43 system; of the Historic Saratoga-Washington on the Hudson Partnership;
44 of the Hudson River Greenway; and all programs and entities in the arts
45 and cultural affairs law shall be transferred, assigned to, assumed by
46 and devolved upon the office.

47 S 21. Transfer of employees. Upon the transfer of functions to the
48 office pursuant to this chapter, provision shall be made for the trans-
49 fer to the office of such employees of the education department, office
50 of parks, recreation and historic preservation and state council of the
51 arts, and other employees who are engaged in carrying out such functions
52 as may be necessary for the exercise of the functions of the office,
53 subject to the approval of the director of the budget. Employees so
54 transferred shall be transferred without further examination or quali-
55 fication and shall retain their respective civil service classifications
56 and status. For the purpose of determining the employees holding perma-

1 nent appointment in competitive class positions to be transferred, such
2 employees shall be selected in each class of positions in the order of
3 their original appointment, with due regard to the right of preference
4 in retention of disabled and nondisabled veterans. Any such employee who
5 at the time of such transfer, has a temporary or provisional appointment
6 shall be transferred subject to the same right of removal, examination
7 or termination as though such transfer had not been made. Employees
8 holding permanent appointments in competitive class positions who are
9 not transferred pursuant to this section shall have their names entered
10 upon an appropriate preferred list for reinstatement pursuant to the
11 civil service law.

12 S 22. Transfer of records. The commissioners and directors of the
13 departments, boards, commissions or other agencies, the functions,
14 powers, duties and obligations of which are transferred by this chapter,
15 shall deliver to the director all books, papers, records and property of
16 such departments, boards, commissions or other agencies, and of such
17 commissioners or directors pertaining to the functions transferred
18 pursuant to this chapter.

19 S 23. Continuity of authority. For the purpose of succession to all
20 functions, powers, duties and obligations of departments, agencies,
21 boards, commissions, and commissioners or directors thereof, transferred
22 and assigned to, devolved upon and assumed by the office pursuant to
23 this chapter, the office shall be deemed and held to constitute the
24 continuation of such departments, commissions, boards or other agencies
25 and not a different agency or authority.

26 S 24. Completion of unfinished business. Any business or other matter
27 undertaken or commenced by departments, commissions, boards or other
28 agencies, or the commissioners or directors thereof, pertaining, to or
29 connected with the functions, powers, obligations and duties transferred
30 and assigned pursuant to this chapter, and pending on the effective date
31 of this chapter, may be conducted and completed by the office in the
32 same manner and under the same terms and conditions and with the same
33 effect as if conducted and completed by such departments, commissions,
34 boards or other agencies, or commissioners and directors thereof.

35 S 25. Continuance of rules and regulations. All rules, regulations,
36 acts, determinations and decisions of departments, commissions, boards
37 or other agencies, and commissioners and directors thereof, pertaining
38 to the functions transferred and assigned by this chapter to the office
39 in force at the time of such transfer, assignment, assumption or devolu-
40 tion shall continue in force and effect as rules, regulations, acts,
41 determinations and decisions of the department of environmental conser-
42 vation until duly modified or repealed by the office.

43 S 26. Terms occurring in laws, contracts and other documents. Whenever
44 the departments, commissions, boards or other agencies, or commissioners
45 and directors thereof, the functions, powers, obligations and duties of
46 which are transferred by this chapter to the office, are referred to or
47 designated in any law, contract or document pertaining to the functions,
48 powers, obligations and duties hereby transferred and assigned, such
49 reference or designation shall be deemed to refer to the office and the
50 director as may be appropriate.

51 S 27. Existing rights and remedies preserved. No existing right or
52 remedy of any character shall be lost, impaired or affected by reason of
53 this chapter.

54 S 28. Pending actions and proceedings. No action or proceeding pending
55 at the time this chapter takes effect, brought by or against the depart-
56 ments, commissions, boards or other agencies, or commissioners and

1 directors thereof, the functions, powers, obligations and duties of
2 which are transferred by this chapter to the office shall be affected by
3 any provision of this chapter, but the same may be prosecuted or
4 defended in the name of the director or office. In all such actions and
5 proceedings, the office, upon application to the court, shall be substi-
6 tuted as a party.

7 S 29. Transfer of appropriations. All appropriations or reappropri-
8 ations made to departments, commissions, boards or other agencies for
9 the functions and purposes transferred to the office by this chapter, or
10 segregated pursuant to law, to the extent of remaining unexpended or
11 unencumbered balances thereof, whether allocated or unallocated and
12 whether obligated or unobligated, are hereby transferred to and made
13 available for use and expenditure by the office subject to the approval
14 of the director of the budget for the same purposes for which originally
15 appropriated or reappropriated and shall be payable on vouchers certi-
16 fied or approved by the director on audit and warrant of the comp-
17 troller. Payments for liabilities for expenses of personal service,
18 maintenance and operation incurred by such departments, commissions,
19 boards or other agencies, in connection with the functions so trans-
20 ferred, shall also be made on vouchers or certificates approved by the
21 director on audit and warrant of the comptroller.

22 S 30. Codification of changes. The director shall prepare or cause to
23 be prepared for submission to the legislature on or before January
24 fifteenth, two thousand fifteen, a codification of the laws relating to
25 the functions, powers and duties of the office as amended, repealed or
26 modified by this chapter and other acts related thereto and such other
27 measures as may be appropriate to effectuate the purposes of this chap-
28 ter and such acts.

29 ARTICLE 4
30 CULTURAL AND HERITAGE
31 RESOURCES BOARD

32 Section 40. Cultural and heritage resources board.

33 S 40. Cultural and heritage resources board. 1. There is hereby
34 established within the office the cultural and heritage resources board
35 to consist of the director, the commissioners of education and environ-
36 mental conservation, the chairman of the state council of the arts, the
37 state librarian, the state archivist, the director of the state museum
38 and ten appointed members, of which four shall be appointed by the
39 governor, two shall be appointed by the temporary president of the
40 senate, two shall be appointed by the speaker of the assembly, one shall
41 be appointed by the minority leader of the senate, and one shall be
42 appointed by the minority leader of the assembly. Each appointed member
43 shall serve for a term of four years and shall continue until a replace-
44 ment has been appointed. The board members shall be qualified by educa-
45 tion and experience in the fields of library science, museum studies,
46 public history, archive planning and management, heritage area manage-
47 ment, architecture, arts, archeology and other related professional
48 disciplines. No member shall receive any compensation, but shall be
49 entitled to his or her actual and necessary expenses in performing the
50 duties of office.

51 2. The governor shall designate a chairman from amongst the members of
52 the board appointed by the governor, to hold office at the pleasure of
53 the governor. The board may provide for its organization and appoint
54 such other officers from amongst its members as it deems appropriate.

55 3. The director may appoint staff, upon approval of the board, to
56 assist the board in implementation of its duties.

1 4. The board shall hold regular meetings not less than four times a
2 year at such times and places as it may desire, and special meetings
3 when authorized and called as prescribed by the by-laws or by the direc-
4 tor. Ex-officio members of the board may have a designated represen-
5 tative.

6 S 3. This act shall take effect on the ninetieth day after it shall
7 have become a law.