

STATE OF NEW YORK

1856

2021-2022 Regular Sessions

IN SENATE

January 16, 2021

Introduced by Sen. RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public lands law, in relation to eliminating any yearly fees associated with the use of docks on public waterways

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

1 Section 1. Paragraph (e) of subdivision 7 of section 75 of the public
2 lands law, as added by chapter 791 of the laws of 1992, is amended to
3 read as follows:

4 (e)(i) The commissioner may impose a fee in connection with the issu-
5 ance of any such lease, easement, permit, or other interest, which fee
6 shall be established by rule pursuant to paragraph (f) of this subdivi-
7 sion, and which shall take into account other factors affecting value
8 including but not limited to classes of structure, types of use (includ-
9 ing whether the use is for public or private purposes), location and
10 region, size, usefulness of the parcel standing alone and such other
11 criteria as the commissioner may determine, but which shall exclude the
12 value of improvements thereon constructed and maintained by the adjoining
13 upland owner. The commissioner shall not impose yearly fees for
14 leases, easements, or permits, and any application fee for such shall be
15 subject to the approval of the director of the budget. Application fees
16 shall not exceed one hundred dollars. The rules and regulations required
17 by paragraph (f) of this subdivision shall prescribe that in the event
18 an applicant for a lease, easement or other interest in real property
19 shall dispute and request a reduction of the commissioner's determi-
20 nation of the value of the interest to be conveyed, the commissioner
21 shall, upon the applicant's submission of an appraisal of the value of
22 such property interest conducted in accord with standard and accepted
23 appraisal methodology by an independent appraiser qualified as
24 prescribed in this paragraph and which appraisal varies in its conclu-

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

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1 sion as to value by ten percent or more of the value previously estab-
2 lished by the commissioner, and upon the applicant's agreement to be
3 bound thereby, contract with a second independent appraiser, qualified
4 as prescribed in this paragraph, to render an appraisal of the value of
5 the interest proposed to be conveyed, the results of which appraisal
6 shall be binding upon both the applicant and the commissioner of general
7 services. Such appraiser shall be selected by the commissioner of gener-
8 al services from among a group of at least three appraisers identified
9 by the applicant all of whom must be qualified as prescribed in this
10 paragraph and each of whom must agree to employ standard appraisal meth-
11 odology. For the purposes of this provision a qualified appraiser shall
12 be certified by the secretary of state to transact business as a real
13 estate general appraiser and shall conduct a regular business of the
14 appraisal of real property interests. In the event that the appraisal
15 contracted for in such manner shall conclude that the value of the prop-
16 erty interest in question is equal to the value previously determined by
17 the commissioner plus or minus ten percent, the entire cost of such
18 appraisal shall be borne by the applicant, otherwise, the entire cost
19 thereof shall be borne by the commissioner of general services.

20 (ii) ~~[For leases, easements and conveyances of such interests for~~
21 ~~commercial use of structures on state owned underwater lands, the annual~~
22 ~~fee imposed shall not exceed two percent of the user's net annual income~~
23 ~~for structures not in existence on the effective date of this paragraph.~~
24 ~~Nor, in connection with a structure in existence and in commercial use~~
25 ~~on the effective date of this paragraph, shall the fee charged in~~
26 ~~connection with such a conveyance made after the effective date of this~~
27 ~~subparagraph exceed annually the following schedule for five years~~
28 ~~following the effective date of the interest conveyed pursuant to subdivi-~~
29 ~~sion (b) of this section provided timely application pursuant to that~~
30 ~~subdivision has been made: .2 (two tenths) of one percent, second year:~~
31 ~~.4 (four tenths) of one percent, third year: .6 (six tenths) of one~~
32 ~~percent, fourth year: .8 (eight tenths) of one percent, fifth year, and~~
33 ~~thereafter, one percent, provided that all such percentages in this~~
34 ~~paragraph shall be that percentage of the net income derived from the~~
35 ~~structure or structures on state owned lands, excluding transactions~~
36 ~~involving sales or repair of boats, and sale of gasoline; and the dollar~~
37 ~~valuation of the interest conveyed shall not be increased from year to~~
38 ~~year during that five year period. The fee charged shall be discounted~~
39 ~~ten percent for annual permits.~~

40 (iii) ~~For leases, easements and conveyances of such interests for~~
41 ~~residential use of non-exempt structures in existence and residential~~
42 ~~use on the effective date of this paragraph, the annual fee shall not~~
43 ~~exceed the lesser of twenty dollars per slip or one hundred dollars.~~

44 (iv) Nothing in this paragraph shall preclude the commissioner of
45 general services from agreeing, upon the request of and negotiation with
46 the owner or user of adjacent upland, to such other conveyances or
47 agreements consistent with this section providing for different periodic
48 payments, or a more flexible payment structure, than the fee caps and
49 fees, respectively, set forth for commercial and residential facilities
50 herein. Moreover, notwithstanding the fee caps set in this section, the
51 commissioner may exceed those caps if required to cover the yearly pro
52 rata share, over the term of the conveyance or interest, of the adminis-
53 trative costs in connection with that conveyance or interest.

54 § 2. Paragraph (f) of subdivision 7 of section 75 of the public lands
55 law, as amended by chapter 549 of the laws of 2013, is amended to read
56 as follows:

1 (f) The commissioner, in consultation with the commissioner of envi-
2 ronmental conservation, the secretary of state, the office of parks,
3 recreation and historic preservation and other interested state agencies
4 administering state-owned lands underwater, shall promulgate pursuant to
5 article two of the state administrative procedure act such rules with
6 respect to grants, leases, easements and lesser interests for the use of
7 state-owned land underwater, and the cession of jurisdiction thereof, as
8 in his or her judgment are reasonable and necessary to protect the
9 interests of the people in such lands underwater. Such regulations shall
10 include without being limited to: the fees to be charged, consistent
11 with the provisions of this section, including mitigation of such fees
12 in the event of economic hardship on existing commercial enterprises;
13 fee limitations to administrative expenses for municipal uses which are
14 public, non-commercial and offer services free or for nominal fees, and
15 for uses undertaken and operated for public and non-commercial purposes
16 by not-for-profit corporations characterized as charitable corporations
17 as defined in paragraph (a) of section one hundred two (Definitions) of
18 the not-for-profit corporation law, and for uses undertaken and operated
19 for public purposes by a corporation formed pursuant to the religious
20 corporation law or by a corporation formed pursuant to a special act of
21 this state and which has as its principal purpose a religious purpose;
22 such further exemptions for projects as the commissioner determines do
23 not represent significant encroachments; limitations on grants, includ-
24 ing conversion grants, with respect to underwater lands consistent with
25 the public purposes of this subdivision and limiting such grants to
26 exceptional circumstances; and factors to be examined in considering an
27 application for a lease, easement or other interest. Those factors shall
28 include without limitation the following: (i) the environmental impact
29 of the project; (ii) the values for natural resource management, recre-
30 ational uses, and commercial uses of the pertinent underwater land;
31 (iii) the size, character and effects of the project in relation to
32 neighboring uses; (iv) the potential for interference with navigation,
33 public uses of the waterway and rights of other riparian owners; (v) the
34 effect of the project on the natural resource interests of the state in
35 the lands; (vi) the water-dependent nature of the use; (vii) and any
36 adverse economic impact on existing commercial enterprises. [~~The final~~
37 ~~promulgation of rules establishing fees or fee structures~~] Prior to
38 their promulgation, any rules or regulations describing fees to be
39 charged by the commissioner shall be subject to the approval of the
40 director of the budget; however, the director of the budget shall not be
41 authorized to allow any yearly fee for a lease, or the granting of an
42 easement or permit for the use of state-owned land underwater.

43 § 3. This act shall take effect on the sixtieth day after it shall
44 have become a law. Effective immediately, the addition, amendment
45 and/or repeal of any rule or regulation by the commissioner of environ-
46 mental conservation necessary for the implementation of this act on its
47 effective date are authorized to be made and completed on or before such
48 effective date.