S T A T E O F N E W Y O R K

4741

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the public lands law, in relation to leases, easements, permits and conveyances of other interests for certain state-owned lands underwater

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

Section 1. Subdivision 1 of section 3-0301 of the environmental conservation law is amended by adding a new paragraph ee to read as follows:

EE. PROVIDE ADVICE AND RECOMMENDATIONS, PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (D) OF SUBDIVISION SEVEN OF SECTION SEVENTY-FIVE OF THE PUBLIC LANDS LAW, TO THE COMMISSIONER OF GENERAL SERVICES REGARDING THE LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST OF STATE-OWNED LANDS UNDERWATER TO PROTECT THE ENVIRONMENT AND NATURAL RESOURCES;

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

(d) (i) The commissioner of environmental conservation and the secretary of state shall review any proposed lease, easement, permit or other interest, except for facilities in existence on June seventeenth, nineteen hundred ninety-two, and which are not the subject of an action by the attorney general for unlawful occupation of state lands under water on the effective date of this paragraph. The commissioner of environmental conservation shall recommend conditions to protect the environment and natural resources. THE SECRETARY OF STATE SHALL RECOMMEND CONDITIONS TO MAINTAIN CONSISTENCY WITH THE COASTAL ZONE MANAGEMENT POLICIES. The commissioner of general services shall incorporate those conditions in any lease, easement, permit or other interest, [giving due regard as well to the recommendations of the secretary of state with respect to coastal issues,] or shall deny the proposal if the commis-

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

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sioner of environmental conservation, upon administrative findings, determines that the environment or natural resources cannot be adequately protected. Such lease, easement, permit, or other conveyance of an interest shall state the purpose for which it is made, and shall also be subject to all applicable federal, state and local laws, rules, regulations and codes.

(ii) The owner, occupier or any other person or entity (except those against whom there has been commenced on the effective date of this paragraph an action by the attorney general, for unlawful occupation of state lands under water) with a legal or beneficial interest in any structure not excepted by paragraph (b) of this subdivision and occupying state lands underwater on the effective date of the rules authorized by paragraph (f) of this subdivision, as adopted pursuant to subdivision five of section two hundred two of the state administrative procedure act, shall make application for such lease, easement, permit or other interest within one year from that effective date.

Except where timely application for such an interest has been made within one year pursuant to this subdivision, the commissioner is authorized to require the term of such lease, easement, permit, or other interest to be retroactive to the effective date of the rules so adopted. Any instrument conveying an interest in real property which is made retroactive shall include provision for payment of consideration for the portion of the term which extends retroactively including, where appropriate, interest on such consideration at the same rate then currently in effect and applied to judgments rendered in the court of claims.

(iii) FOR A LEASE, EASEMENT, PERMIT, OR CONVEYANCE OF OTHER INTEREST FOR STATE-OWNED LANDS UNDER WATER OVER ONE MILE FROM SHORE FOR COMMERCIAL USE OF STRUCTURES, PLATFORMS OR MOORINGS, NOT INCLUDING MARINAS OR OTHER FACILITIES USED FOR THE BERTHING AND MOORING OF PLEASURE VESSELS, INCLUDING ROWBOATS AND CANOES AND THE STORAGE THEREOF AND ANY FACILITY THAT SERVICES PLEASURE VESSELS, THE FOLLOWING SHALL APPLY:

(A) THE COMMISSIONER OF GENERAL SERVICES SHALL PREPARE AN ENVIRONMENTAL IMPACT STATEMENT ON THE GRANTING OF SUCH LEASE, EASEMENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW.

(B) WITHIN THIRTY DAYS OF RECEIVING AN APPLICATION FOR SUCH LEASE, EASEMENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST, THE COMMISSIONER OF GENERAL SERVICES SHALL HOLD PUBLIC HEARINGS IN THE COMMUNITIES AFFECTED ON THE TOPIC OF THE GRANTING OF SUCH LEASE.

(C) THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION AND THE SECRETARY OF STATE SHALL REVIEW ANY PROPOSED LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL RECOMMEND CONDITIONS TO PROTECT THE ENVIRONMENT AND NATURAL RESOURCES. THE SECRETARY OF STATE SHALL RECOMMEND CONDITIONS TO MAINTAIN CONSISTENCY WITH THE COASTAL ZONE MANAGEMENT POLICIES.

(D) THE COMMISSIONER OF GENERAL SERVICES IN DECIDING WHETHER TO GRANT SUCH LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST SHALL CONSIDER THE ENVIRONMENTAL IMPACT STATEMENT AND THE INFORMATION GIVEN AT THE PUBLIC HEARINGS. SUCH COMMISSIONER SHALL INCORPORATE SUCH INFORMATION AND THE RECOMMENDED CONDITIONS PURSUANT TO CLAUSE (C) OF THIS SUBPARAGRAPH IN ANY LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST, OR SHALL DENY THE PROPOSAL IF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, UPON ADMINISTRATIVE FINDINGS, DETERMINES THAT THE ENVIRONMENT OR NATURAL RESOURCES CANNOT BE ADEQUATELY PROTECTED, OR IF THE SECRETARY OF STATE DETERMINES THAT SUCH LEASE, EASEMENT, PERMIT, OR

OTHER CONVEYANCE OF INTEREST IS NOT CONSISTENT WITH THE COASTAL ZONE MANAGEMENT POLICIES, OR IF THE PREPONDERANCE OF EVIDENCE FROM THE ENVIRONMENTAL IMPACT STATEMENT AND PUBLIC HEARINGS SHOWS SUCH LEASE, EASEMENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST WOULD HAVE SUBSTANTIAL NEGATIVE EFFECTS UPON THE HEALTH AND WELFARE OF NEW YORK STATE. SUCH LEASE, EASEMENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST SHALL STATE THE PURPOSE FOR WHICH IT IS MADE, AND SHALL ALSO BE SUBJECT TO ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS, RULES, REGULATIONS AND CODES. FOR THE PURPOSES OF THIS SECTION, PLEASURE VESSEL SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH (C) OF SUBDIVISION SIX OF SECTION TWO OF THE NAVIGATION LAW.

(IV) The commissioner shall make reasonable efforts to provide notice to persons affected by the requirements of this section.

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