

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

10575--A

I N A S S E M B L Y

April 8, 2010

Introduced by M. of A. ENGLEBRIGHT, REILLY, GOTTFRIED, MAISEL, DeMONTE, GLICK, LIFTON, SKARTADOS, FIELDS, COLTON, JAFFEE, MILLMAN, CASTRO, DINOWITZ, D. WEPRIN, HOOPER -- Multi-Sponsored by -- M. of A. BARRON, BING, GIBSON, MARKEY, MAYERSOHN, McENENY -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the parks, recreation and historic preservation law, in relation to providing for a review process of proposals to alienate municipal parkland

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

Section 1. The parks, recreation and historic preservation law is amended by adding a new article 16 to read as follows:

ARTICLE 16

MUNICIPAL PARKLAND ALIENATION

SECTION 16.01 DECLARATION OF POLICY.

16.03 DEFINITIONS.

16.05 MUNICIPAL PARKLAND ALIENATION.

16.07 PARKLAND ALIENATION PROPOSAL REVIEW.

16.09 PARKLAND ALIENATION REPORTING.

16.11 PARKLAND ALIENATION ENFORCEMENT.

16.13 STATE AUDITS.

16.15 PUBLIC TRUST DOCTRINE NOT AFFECTED.

S 16.01 DECLARATION OF POLICY. THE LEGISLATURE FINDS AND DECLARES THAT MUNICIPALLY OWNED PARKLAND ENHANCES THE QUALITY OF LIFE, COMMUNITY CHARACTER, AND ECONOMIC VITALITY OF LOCAL COMMUNITIES AND PROVIDES HEALTHY AND AFFORDABLE RECREATIONAL AND EDUCATIONAL OPPORTUNITIES TO NEW YORK STATE RESIDENTS AND VISITORS. ONCE LOST, MUNICIPAL PARKLAND IS DIFFICULT TO RECOVER. ACCORDINGLY, THE DISCONTINUATION OR ALIENATION OF MUNICIPAL PARKLAND SHOULD BE ACCOMPANIED BY REPLACEMENT WITH COMPARABLE PARKLAND TO BE AVAILABLE TO THE COMMUNITY AND RESIDENTS OF THE STATE.

NEW YORK STATE COURTS HAVE LONG HELD THAT MUNICIPAL PARKLAND IS SUBJECT TO A "PUBLIC TRUST" FOR THE BENEFIT OF THE PUBLIC. FOR MORE THAN

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

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1 A CENTURY, NEW YORK STATE COURTS HAVE UPHELD THE REQUIREMENT THAT MUNIC-
2 IPAL PARKLAND MAY NOT BE ALIENATED WITHOUT PRIOR ENACTMENT OF STATE
3 LEGISLATION AUTHORIZING SUCH ALIENATION. THIS BODY OF LAW IS COMMONLY
4 REFERRED TO AS THE "PUBLIC TRUST DOCTRINE".

5 WITHOUT LIMITING OR RESTRICTING EXISTING "PUBLIC TRUST DOCTRINE," IT
6 IS HEREBY DECLARED TO BE THE PUBLIC POLICY AND IN THE PUBLIC INTEREST OF
7 THIS STATE TO PROVIDE FOR A COMPREHENSIVE PROGRAM ADMINISTERED BY THE
8 OFFICE TO REVIEW PROPOSALS TO ALIENATE MUNICIPAL PARKLAND IN ORDER TO
9 PROMOTE THE USE, PROTECTION, AND MAINTENANCE OF MUNICIPAL PARKLAND FOR
10 THE ENJOYMENT, WELFARE, RECREATION, PROSPERITY, AND ENRICHMENT OF THE
11 PEOPLE OF THE STATE OF NEW YORK.

12 S 16.03 DEFINITIONS. WHEN USED IN THIS ARTICLE:

13 1. "MUNICIPAL PARKLAND" SHALL MEAN REAL PROPERTY OR INTERESTS THEREIN
14 THAT IS OWNED BY A MUNICIPALITY THAT PROVIDES PUBLIC PARK, RECREATION,
15 OR OPEN SPACE PROTECTION PURPOSES. MUNICIPAL PARKLAND INCLUDES: LANDS
16 THAT HAVE BEEN DEDICATED FOR SUCH PURPOSES BY THE MUNICIPALITY THROUGH A
17 FORMAL RESOLUTION OR SIMILAR ACTION; LANDS THAT HAVE BEEN PURCHASED OR
18 ACCEPTED FOR SUCH PURPOSES; OR LANDS THAT CURRENTLY OR HISTORICALLY HAVE
19 BEEN AVAILABLE TO AND USED BY THE PUBLIC FOR SUCH PURPOSES.

20 2. "MUNICIPAL PARKLAND ALIENATION" SHALL MEAN ANY ACTION BY A MUNICI-
21 PALITY TO SELL, LEASE, DISCONTINUE, OR CHANGE THE USE OF MUNICIPAL PARK-
22 LAND.

23 3. "MUNICIPALITY" SHALL MEAN A COUNTY, TOWN, CITY, OR VILLAGE. IT
24 SHALL ALSO MEAN A SCHOOL DISTRICT OR OTHER POLITICAL SUBDIVISION IN
25 INSTANCES WHERE SUCH ENTITY HAS OBTAINED STATE OR FEDERAL GRANT FUNDING
26 FOR THE CREATION OF MUNICIPAL PARKLAND.

27 4. "PARKLAND ALIENATION LEGISLATION" SHALL MEAN LEGISLATION INTRODUCED
28 IN THE STATE LEGISLATURE AUTHORIZING A MUNICIPALITY TO ALIENATE PARKLAND
29 UNDER ITS JURISDICTION.

30 5. "STATE OR FEDERAL GRANT FUNDING" SHALL INCLUDE BUT IS NOT NECESSAR-
31 ILY LIMITED TO: GRANTS PROVIDED PURSUANT TO THE STATE PARK AND RECRE-
32 ATION LAND ACQUISITION BOND ACTS OF 1960 AND 1965, THE OUTDOOR RECRE-
33 ATION DEVELOPMENT BOND ACT OF 1965, THE ENVIRONMENTAL QUALITY BOND ACT
34 OF 1986, THE ENVIRONMENTAL PROTECTION ACT OF 1993 AND THE CLEAN
35 WATER/CLEAN AIR BOND ACT OF 1996; FUNDS PROVIDED THROUGH STATE APPROPRI-
36 ATION OR GRANT PROGRAMS FOR PARKLAND PURPOSES; AND THE FEDERAL LAND AND
37 WATER CONSERVATION FUND AND THE URBAN PARK AND RECREATION RECOVERY
38 PROGRAM.

39 6. "PUBLIC TRUST DOCTRINE" SHALL MEAN THE BODY OF STATE JUDICIAL COURT
40 DECISIONS THAT HOLD THAT MUNICIPAL PARKLAND, AND SOME OTHER PUBLICLY
41 HELD LANDS, ARE HELD IN TRUST FOR THE BENEFIT OF THE PUBLIC AND CANNOT
42 BE USED FOR ANY OTHER PURPOSE WITHOUT LEGISLATIVE AUTHORIZATION.

43 S 16.05 MUNICIPAL PARKLAND ALIENATION. NO MUNICIPALITY SHALL ALIENATE
44 MUNICIPAL PARKLAND UNLESS IT HAS RECEIVED PRIOR AUTHORIZATION THROUGH
45 THE ENACTMENT BY THE LEGISLATURE AND APPROVAL BY THE GOVERNOR OF PARK-
46 LAND ALIENATION LEGISLATION. ALL SUCH LEGISLATION SHALL INCLUDE, AT A
47 MINIMUM, THE FOLLOWING ELEMENTS:

48 1. THE LEGISLATION SHALL INCLUDE A DESCRIPTION OF THE PARCEL OF MUNIC-
49 IPAL PARKLAND PROPOSED TO BE ALIENATED INCLUDING A FORMAL METES AND
50 BOUNDS DESCRIPTION AND THE TOTAL ACREAGE BEING ALIENATED.

51 2. EXCEPT AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION, MUNIC-
52 IPAL PARKLAND ALIENATION LEGISLATION SHALL INCLUDE A REQUIREMENT THAT
53 THE MUNICIPALITY ACQUIRE AND DEDICATE REPLACEMENT PARKLAND. THE REPLACE-
54 MENT PARKLAND MUST BE OF EQUAL OR GREATER ACREAGE, EQUAL OR GREATER FAIR
55 MARKET VALUE, AND EQUAL OR GREATER RECREATIONAL USEFULNESS THAN THE
56 EXISTING PARKLAND THAT IS AUTHORIZED FOR ALIENATION. THE LEGISLATION

1 SHALL INCLUDE A GENERAL DESCRIPTION OF THE REPLACEMENT PARKLAND INCLUD-
2 ING A FORMAL METES AND BOUNDS DESCRIPTION AND THE TOTAL ACREAGE OF THE
3 REPLACEMENT PARCEL. THE LEGISLATION SHALL ALSO INCLUDE A REQUIREMENT
4 THAT THE AUTHORIZATION TO ALIENATE EXISTING MUNICIPAL PARKLAND SHALL NOT
5 BECOME EFFECTIVE UNTIL THE MUNICIPALITY HAS FIRST ACQUIRED AND DEDICATED
6 REPLACEMENT PARKLAND.

7 3. ACQUISITION AND DEDICATION OF REPLACEMENT PARKLAND SHALL NOT BE
8 REQUIRED BY SUCH LEGISLATION IN THE FOLLOWING INSTANCES ONLY:

9 (A) IN THE CASE OF MUNICIPAL PARKLAND BEING ALIENATED FOR PURPOSES OF
10 AN EASEMENT FOR A UTILITY, THE LEGISLATION SHALL INCLUDE A REQUIREMENT
11 THAT THE MUNICIPALITY DEDICATE THE FAIR MARKET VALUE OF THE EASEMENT FOR
12 THE ACQUISITION OF ADDITIONAL PARKLAND OR CAPITAL IMPROVEMENTS TO EXIST-
13 ING PARKLAND FACILITIES. THE LEGISLATION SHALL ALSO REQUIRE THAT SURFACE
14 DISTURBANCES TO PARKLAND BE RESTORED AND THAT, ONCE RESTORED, THE LAND
15 CONTINUE TO BE USED FOR PARKLAND PURPOSES.

16 (B) IN THE CASE OF MUNICIPAL PARKLAND BEING ALIENATED THROUGH A LEASE
17 AUTHORIZING A NON-MUNICIPAL ENTITY TO CONSTRUCT OR OPERATE A PARK-RELAT-
18 ED FACILITY WITHIN MUNICIPAL PARKLAND, THE LEGISLATION SHALL REQUIRE
19 THAT SUCH FACILITY CONTINUE TO PROVIDE SUFFICIENT PUBLIC BENEFIT TO BE
20 CONSIDERED A PUBLIC FACILITY; PROVIDED THAT LEGISLATION AUTHORIZING ANY
21 LEASE FOR A NON-PARK-RELATED FACILITY OR USE, OR FOR A PARK-RELATED
22 FACILITY WITH INSUFFICIENT PUBLIC BENEFIT TO BE CONSIDERED A PUBLIC
23 FACILITY, SHALL REQUIRE REPLACEMENT PARKLAND.

24 4. ALL SUCH LEGISLATION SHALL INCLUDE THE FOLLOWING LANGUAGE: "IF THE
25 PARKLAND THAT IS THE SUBJECT OF THIS LEGISLATION HAS RECEIVED FUNDING
26 PURSUANT TO THE FEDERAL LAND AND WATER CONSERVATION FUND, THE DISCONTIN-
27 UANCE OF PARKLAND AUTHORIZED BY THE PROVISIONS OF THIS LEGISLATION SHALL
28 NOT OCCUR UNTIL THE MUNICIPALITY HAS COMPLIED WITH THE FEDERAL REQUIRE-
29 MENTS PERTAINING TO THE CONVERSION OF PARKLANDS, INCLUDING SATISFYING
30 THE SECRETARY OF THE INTERIOR THAT THE DISCONTINUANCE WILL INCLUDE ALL
31 CONDITIONS WHICH THE SECRETARY OF THE INTERIOR DEEMS NECESSARY TO ASSURE
32 THE SUBSTITUTION OF OTHER LANDS SHALL BE EQUIVALENT IN FAIR MARKET VALUE
33 AND RECREATIONAL USEFULNESS TO THE LANDS BEING DISCONTINUED."

34 S 16.07 PARKLAND ALIENATION PROPOSAL REVIEW. 1. NO PARKLAND ALIENATION
35 LEGISLATION SHALL BE ENACTED UNLESS A MUNICIPALITY HAS FIRST APPLIED FOR
36 AND RECEIVED FROM THE OFFICE A CERTIFICATION THAT THE PROPOSED ALIEN-
37 ATION SATISFIES THE REQUIREMENTS OF SECTION 16.05 OF THIS ARTICLE. THE
38 APPLICATION FOR CERTIFICATION SHALL BE SUBMITTED TO THE OFFICE BY THE
39 GOVERNING BODY OF A MUNICIPALITY IN A FORM PRESCRIBED BY THE COMMISSION-
40 ER AND SHALL, AT A MINIMUM, CONTAIN THE FOLLOWING INFORMATION AND
41 SUPPORTING DOCUMENTATION:

42 (A) A DESCRIPTION OF THE PARKLAND TO BE ALIENATED, INCLUDING A GENERAL
43 DESCRIPTION OF THE LAND, A FORMAL METES AND BOUNDS DESCRIPTION OF THE
44 PARCEL, THE TOTAL ACREAGE BEING ALIENATED, AND THE FAIR MARKET VALUE OF
45 THE PARCEL.

46 (B) A DESCRIPTION OF THE REPLACEMENT PARKLAND INCLUDING A GENERAL
47 DESCRIPTION OF THE REPLACEMENT LAND, A FORMAL METES AND BOUNDS
48 DESCRIPTION, THE TOTAL ACREAGE OF THE PARCEL, AND THE FAIR MARKET VALUE
49 OF THE PARCEL. IT SHALL ALSO CONTAIN A DISCUSSION OF THE RECREATIONAL
50 USEFULNESS OF THE REPLACEMENT PARCEL AND A DISCUSSION OF ITS PROXIMITY
51 TO THE PARKLAND BEING ALIENATED.

52 (C) IN THE CASE OF MUNICIPAL PARKLAND BEING ALIENATED FOR PURPOSES OF
53 AN EASEMENT FOR A UTILITY, A DESCRIPTION OF HOW THE PROCEEDS OF A SALE
54 OR LEASE OR THE EASEMENT WOULD BE DEDICATED FOR THE ACQUISITION OF ADDI-
55 TIONAL PARKLANDS AND/OR FOR CAPITAL IMPROVEMENTS TO EXISTING PARK AND
56 RECREATIONAL FACILITIES.

(D) IN THE CASE OF A LEASE AUTHORIZING A NON-MUNICIPAL ENTITY TO CONSTRUCT OR OPERATE A PARK-RELATED FACILITY WITHIN MUNICIPAL PARKLAND, AN EXPLANATION OF THE IMPACT OF SUCH LEASE ON PUBLIC ACCESS TO THE PARKLAND.

(E) A DESCRIPTION OF THE MUNICIPALITY'S COMPLIANCE WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT AS SET FORTH IN ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW, INCLUDING COMPLETED COPIES OF THE REQUIRED FORMS, STATEMENTS, AND ASSESSMENTS OF THE ENVIRONMENTAL IMPACTS OF THE PROPOSED MUNICIPAL PARKLAND ALIENATION.

2. WITHIN NINETY DAYS OF RECEIVING A COMPLETE APPLICATION, THE OFFICE SHALL RESPOND IN WRITING AND EITHER:

(A) ISSUE A CERTIFICATION THAT THE PROPOSED MUNICIPAL PARKLAND ALIENATION MEETS THE REQUIREMENTS OF SECTION 16.05 OF THIS ARTICLE; OR

(B) DENY THE CERTIFICATION, PROVIDING AN EXPLANATION FOR THE DENIAL AND WHERE APPROPRIATE SUGGESTING CHANGES OR ADDITIONS THAT WOULD RESULT IN ISSUANCE OF A CERTIFICATION. WITHIN THIRTY DAYS OF RECEIVING A REVISED APPLICATION, THE OFFICE SHALL RECONSIDER THE APPLICATION AND NOTIFY THE MUNICIPALITY IN WRITING WHETHER THE CERTIFICATION HAS BEEN ISSUED OR DENIED.

3. THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE SITING OF MAJOR UTILITY TRANSMISSION FACILITIES SUBJECT TO ARTICLE SEVEN OF THE PUBLIC SERVICE LAW.

S 16.09 PARKLAND ALIENATION REPORTING. ANY MUNICIPALITY THAT HAS RECEIVED ALIENATION AUTHORIZATION THROUGH ENACTMENT OF MUNICIPAL PARKLAND ALIENATION LEGISLATION SHALL SUBMIT A REPORT TO THE OFFICE NO LATER THAN DECEMBER THIRTY-FIRST OF THE CALENDAR YEAR FOLLOWING THE ENACTMENT OF THE LEGISLATION. SUCH REPORT SHALL BE SIGNED BY THE MUNICIPALITY'S CHIEF EXECUTIVE OFFICER AND SHALL INCLUDE:

1. A NARRATIVE DESCRIPTION OF THE STATUS OF THE PARKLAND ALIENATION ACTIONS AUTHORIZED AND REQUIRED IN THE LEGISLATION; AND

2. AN ATTESTATION THAT THE MUNICIPALITY HAS COMPLIED WITH ALL CONDITIONS OF THE PARKLAND ALIENATION LEGISLATION, INCLUDING THE DEDICATION OF ANY REQUIRED REPLACEMENT PARKLAND OR, IN THE CASE OF UTILITY EASEMENTS, THE DEDICATION OF FUNDING FOR THE ACQUISITION OF ADDITIONAL PARKLAND OR CAPITAL IMPROVEMENTS TO EXISTING PARKLAND FACILITIES; OR

3. IN THE EVENT THAT ANY CONDITION OF THE PARKLAND ALIENATION LEGISLATION HAS NOT BEEN FULLY COMPLIED WITH, THE MUNICIPALITY SHALL PROVIDE THE OFFICE WITH AN INTERIM REPORT DETAILING THE STATUS OF ITS ACTIONS AND AN EXPLANATION AS TO WHY CERTAIN CONDITIONS HAVE NOT BEEN MET, ALONG WITH THE ANTICIPATED DATE BY WHICH SUCH CONDITIONS WILL BE MET. THE MUNICIPALITY SHALL CONTINUE TO FILE INTERIM REPORTS ANNUALLY UNTIL SUCH TIME AS THE CONDITIONS HAVE BEEN MET AND A FINAL REPORT IS FILED. UNLESS A LONGER TIME PERIOD IS SPECIFIED IN THE LEGISLATION AUTHORIZING THE ALIENATION, IF THE CONDITIONS OF THE ALIENATION HAVE NOT BEEN MET BY DECEMBER THIRTY-FIRST OF THE THIRD CALENDAR YEAR FOLLOWING THE ENACTMENT OF PARKLAND ALIENATION LEGISLATION, THE MUNICIPALITY SHALL BE SUBJECT TO ENFORCEMENT PURSUANT TO SECTION 16.11 OF THIS ARTICLE.

S 16.11 PARKLAND ALIENATION ENFORCEMENT. AN ACTION FOR INJUNCTIVE RELIEF AS PROVIDED IN THIS SECTION AGAINST A MUNICIPALITY VIOLATING ANY PROVISION OF THIS ARTICLE MAY BE BROUGHT BY THE ATTORNEY GENERAL UPON REFERRAL BY THE OFFICE OR UPON HIS OR HER OWN INITIATIVE.

1. A MUNICIPALITY MAY BE ENJOINED FROM ALIENATING PARKLAND WHERE IT ACTS OR HAS ACTED IN FURTHERANCE OF PARKLAND ALIENATION:

(A) WITHOUT THE ENACTMENT OF PARKLAND ALIENATION LEGISLATION;

(B) WITHOUT OBTAINING CERTIFICATION FROM THE OFFICE AS REQUIRED BY THIS ARTICLE; OR

1 (C) WITHOUT COMPLIANCE WITH THE TERMS OF PARKLAND ALIENATION LEGIS-
2 LATION; OR

3 (D) WITHOUT COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE, INCLUD-
4 ING REPORTING REQUIREMENTS.

5 WHERE APPROPRIATE, SUCH MUNICIPALITY MAY BE COMPELLED TO RESTORE SUCH
6 PARKLAND TO PARK PURPOSES OR TO REPLACE PARKLAND ALIENATED IN VIOLATION
7 OF THIS ARTICLE WITH REPLACEMENT PARKLAND OF EQUAL OR GREATER FAIR
8 MARKET VALUE, ACREAGE, AND RECREATIONAL USEFULNESS.

9 2. A MUNICIPALITY THAT FAILS TO PROVIDE REPLACEMENT PARKLAND WHERE
10 REQUIRED BY PARKLAND ALIENATION LEGISLATION MAY BE COMPELLED TO PAY TO
11 THE OFFICE AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF THE ALIENATED
12 PARKLAND, WHICH FUNDS SHALL BE USED BY THE OFFICE TO ACQUIRE REPLACEMENT
13 PARKLAND.

14 S 16.13 STATE AUDITS. WITH THE ADVICE AND GUIDANCE OF THE OFFICE, THE
15 OFFICE OF THE STATE COMPTROLLER SHALL BE EMPOWERED TO CONDUCT AUDITS OF
16 ALL MUNICIPAL PARKLAND ALIENATION LEGISLATION TO ENSURE COMPLIANCE WITH
17 THE TERMS THEREIN.

18 S 16.15 PUBLIC TRUST DOCTRINE NOT AFFECTED. NOTHING IN THIS ARTICLE
19 SHALL BE CONSTRUED TO LIMIT OR RESTRICT PUBLIC TRUST DOCTRINE PRINCIPLES
20 THAT HAVE BEEN ESTABLISHED THROUGH STATE JUDICIAL COURT DECISIONS OR TO
21 PREVENT ENFORCEMENT OF THE PUBLIC TRUST DOCTRINE BY ANY PERSON INCLUDING
22 INDIVIDUAL CITIZENS OF THE STATE OF NEW YORK.

23 S 2. The state commissioner of parks, recreation and historic preser-
24 vation is authorized to promulgate such guidelines and/or rules and
25 regulations as he or she deems necessary to implement the provisions of
26 this act on or before its effective date.

27 S 3. This act shall take effect January 1, 2011.