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

10614

I N A S S E M B L Y

June 8, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Englebright) -- read once and referred to the Committee on Governmental Operations

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:

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

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

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

CHAPTER 11-D OF THE CONSOLIDATED LAWS

CULTURAL AND HERITAGE RESOURCES LAW

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

2. Powers, duties and jurisdiction of the office of cultural and heritage resources. SS 10-17

3. Transfer of functions; interim functions; codification. SS 20-30

4. Cultural and heritage resources board. S 40

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

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ARTICLE 1
SHORT TITLE; DEFINITIONS

Section 1. Short title.
2. Definitions.

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

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

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

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

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

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

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

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

ARTICLE 2
POWERS, DUTIES AND JURISDICTION OF THE OFFICE OF CULTURAL AND HERITAGE RESOURCES

Section 10. Declaration of policy.
11. Office of cultural and heritage resources; director
12. Offices of the office.
13. Organization of office; officers and employees.
14. Functions, powers and duties of office and director.
15. General functions, powers and duties of the office and the director.
16. Summary action.
17. Statewide cultural and heritage plan.

S 10. Declaration of policy. The protection and quality of the state's natural and cultural resources is fundamental to our concern for the quality of life. It is hereby declared to be the policy of this state to conserve, improve, beneficially use and protect its cultural and heritage resources, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.

It shall further be the policy of the state to improve and coordinate the cultural and heritage plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and the concerned individual, and to develop and manage the basic cultural and heritage resources to the end that the state may fulfill its responsibility as trustee of our cultural and heritage resources for the present and future generations. It shall further be the policy of the state to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations by:

1. assuring surroundings which are healthful and aesthetically pleasing;

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

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

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

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

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

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

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

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

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

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

2. promote and coordinate management of cultural and heritage resources to assure their protection, enhancement, provision, allocation

and balanced utilization consistent with the environmental policy of the state;

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

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

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

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

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

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

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

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

4. consult with and cooperate with:

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

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

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

d. appropriate committee or committees of the legislature;

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

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

7. enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with any law, rule or regulation which may be promulgated pursuant to

this article. Any information relating to secret processes or methods of manufacture shall be kept confidential;

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

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

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

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

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

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

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

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

2. The office shall submit such plan to the governor and to the legislature on or before September first, two thousand thirteen, and thereafter shall submit periodic revisions of such plan to the governor and to the legislature. Such plan and such revisions shall become effective upon approval by the board and the governor, and shall serve thereafter as a guide to the public.

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

a. conduct one or more public hearings;

b. consult with and cooperate with:

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

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

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

(iv) officials and representatives of museums, art and cultural institutions, industry and education; and

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

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

ARTICLE 3
TRANSFER OF FUNCTIONS; INTERIM FUNCTIONS; CODIFICATION

Section 20. Transfer of functions.
21. Transfer of employees.
22. Transfer of records.
23. Continuity of authority.
24. Completion of unfinished business.
25. Continuance of rules and regulations.
26. Terms occurring in laws, contracts and other documents.
27. Existing rights and remedies preserved.
28. Pending actions and proceedings.
29. Transfer of appropriations.
30. Codification of changes.

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

S 21. Transfer of employees. Upon the transfer of functions to the office pursuant to this chapter, provision shall be made for the transfer to the office of such employees of the education department, office of parks, recreation and historic preservation and state council of the arts, and other employees who are engaged in carrying out such functions as may be necessary for the exercise of the functions of the office, subject to the approval of the director of the budget. Employees so transferred shall be transferred without further examination or qualification and shall retain their respective civil service classifications and status. For the purpose of determining the employees holding permanent appointment in competitive class positions to be transferred, such employees shall be selected in each class of positions in the order of their original appointment, with due regard to the right of preference

in retention of disabled and nondisabled veterans. Any such employee who at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

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

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

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

S 25. Continuance of rules and regulations. All rules, regulations, acts, determinations and decisions of departments, commissions, boards or other agencies, and commissioners and directors thereof, pertaining to the functions transferred and assigned by this chapter to the office in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, determinations and decisions of the department of environmental conservation until duly modified or repealed by the office.

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

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

S 28. Pending actions and proceedings. No action or proceeding pending at the time this chapter takes effect, brought by or against the departments, commissions, boards or other agencies, or commissioners and directors thereof, the functions, powers, obligations and duties of which are transferred by this chapter to the office shall be affected by any provision of this chapter, but the same may be prosecuted or

defended in the name of the director or office. In all such actions and proceedings, the office, upon application to the court, shall be substituted as a party.

S 29. Transfer of appropriations. All appropriations or reappropriations made to departments, commissions, boards or other agencies for the functions and purposes transferred to the office by this chapter, or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the office subject to the approval of the director of the budget for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the director on audit and warrant of the comptroller. Payments for liabilities for expenses of personal service, maintenance and operation incurred by such departments, commissions, boards or other agencies, in connection with the functions so transferred, shall also be made on vouchers or certificates approved by the director on audit and warrant of the comptroller.

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

ARTICLE 4
CULTURAL AND HERITAGE RESOURCES BOARD

Section 40. Cultural and heritage resources board.

S 40. Cultural and heritage resources board. 1. There is hereby established within the office the cultural and heritage resources board to consist of the director, the commissioners of education and environmental conservation, the chairman of the state council of the arts, the state librarian, the state archivist, the director of the state museum and ten appointed members, of which four shall be appointed by the governor, two shall be appointed by the temporary president of the senate, two shall be appointed by the speaker of the assembly, one shall be appointed by the minority leader of the senate, and one shall be appointed by the minority leader of the assembly. Each appointed member shall serve for a term of four years and shall continue until a replacement has been appointed. The board members shall be qualified by education and experience in the fields of library science, museum studies, public history, archive planning and management, heritage area management, architecture, arts, archeology and other related professional disciplines. No member shall receive any compensation, but shall be entitled to his or her actual and necessary expenses in performing the duties of office.

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

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

4. The board shall hold regular meetings not less than four times a year at such times and places as it may desire, and special meetings when authorized and called as prescribed by the by-laws or by the direc-

tor. Ex-offico members of the board may have a designated representative.

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