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

5539

2011-2012 Regular Sessions

I N A S S E M B L Y

February 23, 2011

Introduced by M. of A. ENGLEBRIGHT, REILLY, GOTTFRIED, MAISEL, GLICK, LIFTON, COLTON, JAFFEE, MILLMAN, CASTRO, DINOWITZ, WEPRIN, HOOPER -- Multi-Sponsored by -- M. of A. BARRON, BING, GIBSON, MARKEY, MAYER-SOHN, McENENY -- read once and referred to the Committee on Environmental Conservation

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.

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

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

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

S 16.03 DEFINITIONS. WHEN USED IN THIS ARTICLE:

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

2. "MUNICIPAL PARKLAND ALIENATION" SHALL MEAN ANY ACTION BY A MUNICIPALITY TO SELL, LEASE, DISCONTINUE, OR CHANGE THE USE OF MUNICIPAL PARKLAND.

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

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

5. "STATE OR FEDERAL GRANT FUNDING" SHALL INCLUDE BUT IS NOT NECESSARILY LIMITED TO: GRANTS PROVIDED PURSUANT TO THE STATE PARK AND RECREATION LAND ACQUISITION BOND ACTS OF 1960 AND 1965, THE OUTDOOR RECREATION DEVELOPMENT BOND ACT OF 1965, THE ENVIRONMENTAL QUALITY BOND ACT OF 1986, THE ENVIRONMENTAL PROTECTION ACT OF 1993 AND THE CLEAN WATER/CLEAN AIR BOND ACT OF 1996; FUNDS PROVIDED THROUGH STATE APPROPRIATION OR GRANT PROGRAMS FOR PARKLAND PURPOSES; AND THE FEDERAL LAND AND WATER CONSERVATION FUND AND THE URBAN PARK AND RECREATION RECOVERY PROGRAM.

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

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

1. THE LEGISLATION SHALL INCLUDE A DESCRIPTION OF THE PARCEL OF MUNICIPAL PARKLAND PROPOSED TO BE ALIENATED INCLUDING A FORMAL METES AND BOUNDS DESCRIPTION AND THE TOTAL ACREAGE BEING ALIENATED.

2. EXCEPT AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION, MUNICIPAL PARKLAND ALIENATION LEGISLATION SHALL INCLUDE A REQUIREMENT THAT THE MUNICIPALITY ACQUIRE AND DEDICATE REPLACEMENT PARKLAND. THE REPLACEMENT PARKLAND MUST BE OF EQUAL OR GREATER ACREAGE, EQUAL OR GREATER FAIR

MARKET VALUE, AND EQUAL OR GREATER RECREATIONAL USEFULNESS THAN THE EXISTING PARKLAND THAT IS AUTHORIZED FOR ALIENATION. THE LEGISLATION SHALL INCLUDE A GENERAL DESCRIPTION OF THE REPLACEMENT PARKLAND INCLUDING A FORMAL METES AND BOUNDS DESCRIPTION AND THE TOTAL ACREAGE OF THE REPLACEMENT PARCEL. THE LEGISLATION SHALL ALSO INCLUDE A REQUIREMENT THAT THE AUTHORIZATION TO ALIENATE EXISTING MUNICIPAL PARKLAND SHALL NOT BECOME EFFECTIVE UNTIL THE MUNICIPALITY HAS FIRST ACQUIRED AND DEDICATED REPLACEMENT PARKLAND.

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

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

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

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

S 16.07 PARKLAND ALIENATION PROPOSAL REVIEW. 1. NO PARKLAND ALIENATION LEGISLATION SHALL BE ENACTED UNLESS A MUNICIPALITY HAS FIRST APPLIED FOR AND RECEIVED FROM THE OFFICE A CERTIFICATION THAT THE PROPOSED ALIENATION SATISFIES THE REQUIREMENTS OF SECTION 16.05 OF THIS ARTICLE. THE APPLICATION FOR CERTIFICATION SHALL BE SUBMITTED TO THE OFFICE BY THE GOVERNING BODY OF A MUNICIPALITY IN A FORM PRESCRIBED BY THE COMMISSIONER AND SHALL, AT A MINIMUM, CONTAIN THE FOLLOWING INFORMATION AND SUPPORTING DOCUMENTATION:

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

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

(C) IN THE CASE OF MUNICIPAL PARKLAND BEING ALIENATED FOR PURPOSES OF AN EASEMENT FOR A UTILITY, A DESCRIPTION OF HOW THE PROCEEDS OF A SALE OR LEASE OR THE EASEMENT WOULD BE DEDICATED FOR THE ACQUISITION OF ADDI-

TIONAL PARKLANDS AND/OR FOR CAPITAL IMPROVEMENTS TO EXISTING PARK AND 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

(C) WITHOUT COMPLIANCE WITH THE TERMS OF PARKLAND ALIENATION LEGISLATION; OR

(D) WITHOUT COMPLIANCE WITH THE REQUIREMENTS OF THIS ARTICLE, INCLUDING REPORTING REQUIREMENTS.

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

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

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

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

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

S 3. This act shall take effect January 1, 2012.