

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:

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

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

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

20 CHAPTER 11-D OF THE CONSOLIDATED LAWS

21 CULTURAL AND HERITAGE RESOURCES LAW

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| 22 | Article 1. Short title; definitions. | SS 1-2 |
| 23 | 2. Powers, duties and jurisdiction of the office of cultural | |
| 24 | and heritage resources. | SS 10-17 |
| 25 | 3. Transfer of functions; interim functions; | |
| 26 | codification. | SS 20-30 |
| 27 | 4. Cultural and heritage resources board. | S 40 |

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

LBD16015-02-2

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.

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

13 1. assuring surroundings which are healthful and aesthetically pleas-
14 ing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 4. consult with and cooperate with:

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

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

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

44 d. appropriate committee or committees of the legislature;

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

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

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

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

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

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

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

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

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

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

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

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

50 2. The office shall submit such plan to the governor and to the legis-
51 lature on or before September first, two thousand thirteen, and there-
52 after shall submit periodic revisions of such plan to the governor and
53 to the legislature. Such plan and such revisions shall become effective
54 upon approval by the board and the governor, and shall serve thereafter
55 as a guide to the public.

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

3 a. conduct one or more public hearings;

4 b. consult with and cooperate with:

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

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

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

11 (iv) officials and representatives of museums, art and cultural insti-
12 tutions, industry and education; and

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

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

21 ARTICLE 3

22 TRANSFER OF FUNCTIONS; INTERIM FUNCTIONS;

23 CODIFICATION

24 Section 20. Transfer of functions.

25 21. Transfer of employees.

26 22. Transfer of records.

27 23. Continuity of authority.

28 24. Completion of unfinished business.

29 25. Continuance of rules and regulations.

30 26. Terms occurring in laws, contracts and other documents.

31 27. Existing rights and remedies preserved.

32 28. Pending actions and proceedings.

33 29. Transfer of appropriations.

34 30. Codification of changes.

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

44 S 21. Transfer of employees. Upon the transfer of functions to the
45 office pursuant to this chapter, provision shall be made for the trans-
46 fer to the office of such employees of the education department, office
47 of parks, recreation and historic preservation and state council of the
48 arts, and other employees who are engaged in carrying out such functions
49 as may be necessary for the exercise of the functions of the office,
50 subject to the approval of the director of the budget. Employees so
51 transferred shall be transferred without further examination or quali-
52 fication and shall retain their respective civil service classifications
53 and status. For the purpose of determining the employees holding perma-
54 nent appointment in competitive class positions to be transferred, such
55 employees shall be selected in each class of positions in the order of
56 their original appointment, with due regard to the right of preference

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

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

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

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

32 S 25. Continuance of rules and regulations. All rules, regulations,
33 acts, determinations and decisions of departments, commissions, boards
34 or other agencies, and commissioners and directors thereof, pertaining
35 to the functions transferred and assigned by this chapter to the office
36 in force at the time of such transfer, assignment, assumption or devolu-
37 tion shall continue in force and effect as rules, regulations, acts,
38 determinations and decisions of the department of environmental conser-
39 vation until duly modified or repealed by the office.

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

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

51 S 28. Pending actions and proceedings. No action or proceeding pending
52 at the time this chapter takes effect, brought by or against the depart-
53 ments, commissions, boards or other agencies, or commissioners and
54 directors thereof, the functions, powers, obligations and duties of
55 which are transferred by this chapter to the office shall be affected by
56 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-

1 tor. Ex-officio members of the board may have a designated represen-
2 tative.
3 S 3. This act shall take effect on the ninetieth day after it shall
4 have become a law.