

3575

2011-2012 Regular Sessions

I N S E N A T E

February 25, 2011

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Subdivision 1 of section 3-0301 of the environmental
2 conservation law is amended by adding a new paragraph ee to read as
3 follows:
4 EE. PROVIDE ADVICE AND RECOMMENDATIONS, PURSUANT TO SUBPARAGRAPH (III)
5 OF PARAGRAPH (D) OF SUBDIVISION SEVEN OF SECTION SEVENTY-FIVE OF THE
6 PUBLIC LANDS LAW, TO THE COMMISSIONER OF GENERAL SERVICES REGARDING THE
7 LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST OF STATE-OWNED
8 LANDS UNDERWATER TO PROTECT THE ENVIRONMENT AND NATURAL RESOURCES;
9 S 2. Paragraph (d) of subdivision 7 of section 75 of the public lands
10 law, as added by chapter 791 of the laws of 1992, is amended to read as
11 follows:
12 (d) (i) The commissioner of environmental conservation and the secre-
13 tary of state shall review any proposed lease, easement, permit or other
14 interest, except for facilities in existence on June seventeenth, nine-
15 teen hundred ninety-two, and which are not the subject of an action by
16 the attorney general for unlawful occupation of state lands under water
17 on the effective date of this paragraph. The commissioner of environ-
18 mental conservation shall recommend conditions to protect the environ-
19 ment and natural resources. THE SECRETARY OF STATE SHALL RECOMMEND
20 CONDITIONS TO MAINTAIN CONSISTENCY WITH THE COASTAL ZONE MANAGEMENT
21 POLICIES. The commissioner of general services shall incorporate those
22 conditions in any lease, easement, permit or other interest, [giving due
23 regard as well to the recommendations of the secretary of state with
24 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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1 sioner of environmental conservation, upon administrative findings,
2 determines that the environment or natural resources cannot be adequately
3 protected. Such lease, easement, permit, or other conveyance of an
4 interest shall state the purpose for which it is made, and shall also be
5 subject to all applicable federal, state and local laws, rules, regu-
6 lations and codes.

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

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

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

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

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

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

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

1 OTHER CONVEYANCE OF INTEREST IS NOT CONSISTENT WITH THE COASTAL ZONE
2 MANAGEMENT POLICIES, OR IF THE PREPONDERANCE OF EVIDENCE FROM THE ENVI-
3 RONMENTAL IMPACT STATEMENT AND PUBLIC HEARINGS SHOWS SUCH LEASE, EASE-
4 MENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST WOULD HAVE SUBSTANTIAL
5 NEGATIVE EFFECTS UPON THE HEALTH AND WELFARE OF NEW YORK STATE. SUCH
6 LEASE, EASEMENT, PERMIT, OR OTHER CONVEYANCE OF INTEREST SHALL STATE THE
7 PURPOSE FOR WHICH IT IS MADE, AND SHALL ALSO BE SUBJECT TO ALL APPLICA-
8 BLE FEDERAL, STATE AND LOCAL LAWS, RULES, REGULATIONS AND CODES. FOR
9 THE PURPOSES OF THIS SECTION, PLEASURE VESSEL SHALL HAVE THE SAME MEAN-
10 ING AS SET FORTH IN PARAGRAPH (C) OF SUBDIVISION SIX OF SECTION TWO OF
11 THE NAVIGATION LAW.

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

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