

S. 7772

A. 10146

S E N A T E - A S S E M B L Y

May 12, 2016

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IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to permitting seaweed cultivation in underwater lands at Gardiner's and Peconic bays to be ceded to Suffolk county for the purpose of establishing an aquaculture management program for the cultivation of shellfish

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

1     Section 1. Section 13-0302 of the environmental conservation law, as  
2     added by chapter 425 of the laws of 2004, is amended to read as follows:  
3     S 13-0302. Lands underwater of Gardiner's and Peconic bays.  
4     1. Underwater lands ceded to county of Suffolk. All the right, title  
5     and interest in which the people of the state of New York have in and to  
6     the lands under water of Gardiner's and Peconic bays in the county of  
7     Suffolk, except underwater lands within one thousand feet of the high  
8     water mark is hereby ceded to such county, for the purposes of shellfish  
9     OR SEAWEED cultivation, to be managed and controlled by such county,  
10    provided that such lands shall revert to the state when they shall cease  
11    to be used for shellfish AND SEAWEED cultivation. For the purposes of  
12    this section, the term "Gardiner's and Peconic bays" shall mean the  
13    waters of Gardiner's and Peconic bays and the tributaries thereof  
14    between the westerly shore of Great Peconic bay and an easterly line  
15    running from the most easterly point of Plum island to Goff point at the  
16    entrance of Napeague harbor.  
17    2. Ratification. The grant of lands under the waters of Gardiner's and  
18    Peconic bays, by the commissioners of shell fisheries, in accordance  
19    with the provisions of chapter 385 of the laws of 1884, as amended,  
20    subsequently held and used by the grantees, heirs, successors, and  
21    assigns on which all taxes and assessments have been paid, are hereby

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

LBD15349-02-6

1 ratified and confirmed. Any underwater lands in Gardiner's and Peconic  
2 Bays previously granted that revert or escheat to the state or are  
3 subject to tax deed by the county of Suffolk shall be available to the  
4 county for leasing pursuant to this section. All other lands under such  
5 waters, which pursuant to such chapters, have escheated or reverted to  
6 the state, are hereby ceded to Suffolk county for the purposes of the  
7 cultivation of shellfish, subject to existing valid grants and ease-  
8 ments; provided however, that nothing in this section shall interfere  
9 with the right of the commissioner of general services to grant lands  
10 and easements under water to owners of adjacent uplands, pursuant to the  
11 provisions of the public lands law, or of the legislature to make such  
12 grants without regard to upland ownership, and to grant franchises to  
13 utilities, municipalities and governmental, educational, or scientific  
14 bodies for cables, outfalls, ecological studies, and experimentation  
15 with controlled marine life.

16 3. Leases FOR SHELLFISH CULTIVATION. Suffolk county may lease lands  
17 under water ceded to it by the state for the purpose of shellfish culti-  
18 vation. Provided if no such leases have been executed by December thir-  
19 ty-first, two thousand ten, such authority to lease pursuant to this  
20 section shall terminate.

21 a. Leases may be issued only within areas designated as shellfish  
22 cultivation zones on a map or maps to be prepared and approved by the  
23 county of Suffolk.

24 b. No lease shall be granted except upon written application on forms  
25 furnished by the county of Suffolk, and properly executed and signed by  
26 the applicant.

27 c. Before a lease is approved, notice shall be provided for at least  
28 two months by posting such notice at the bureau of marine resources in  
29 the department, the office of the county clerk, and the office of the  
30 town clerk in which all or any part of the lands to be leased are  
31 located. Such notice shall also be published in the official newspaper  
32 of the county. The notice shall include the name of the lessee, the  
33 boundaries of the lease, and the area of the lease. A copy of the  
34 proposed lease shall be available for public inspection and copying in  
35 the office of the county clerk.

36 4. Establishment of shellfish cultivation zones. Before leasing or  
37 using the lands hereby ceded to it, the county of Suffolk shall cause an  
38 accurate survey to be made of such lands, and a map or maps to be  
39 prepared therefrom. Such map or maps shall establish shellfish culti-  
40 vation zones within Gardiner's and Peconic bays. Such map or maps shall  
41 be approved by local law. After such map or maps have been adopted, the  
42 county shall have the authority to issue leases for shellfish culti-  
43 vation within the shellfish cultivation zones, as provided herein. Such  
44 map or maps shall be updated by the county of Suffolk every five years.

45 a. Underwater lands within one thousand feet of the high water mark  
46 shall not be included in a shellfish cultivation zone.

47 b. Underwater lands where bay scallops are produced regularly and  
48 harvested on a commercial basis shall not be included in a shellfish  
49 cultivation zone.

50 c. Underwater lands where there is an indicated presence of shellfish  
51 in sufficient quantity and quality and so located as to support signif-  
52 icant hand raking and/or tonging harvesting shall not be included in a  
53 shellfish cultivation zone.

54 d. Underwater lands where the leasing will result in a significant  
55 reduction of established commercial finfish or crustacean fisheries  
56 shall not be included in a shellfish cultivation zone.

1 5. Regulations FOR SHELLFISH CULTIVATION. The county shall, by local  
2 law, before leasing any such underwater lands, adopt regulations govern-  
3 ing:

- 4 a. applications for leases;
- 5 b. notices to be given;
- 6 c. the form and terms of leases;
- 7 d. standards for the approval or denial of leases;
- 8 e. administration of leases;
- 9 f. the transfer or renewal of leases;
- 10 g. marking grounds and testing;
- 11 h. fees;
- 12 i. recording of leases;
- 13 j. bonds; and
- 14 k. such other matters as are appropriate to the leasing program.

15 6. Department authority OVER SHELLFISH CULTIVATION. Notwithstanding  
16 any of the provisions of this section:

- 17 a. any person engaging in the cultivation or harvesting of shellfish  
18 in a shellfish cultivation zone pursuant to this section shall obtain a  
19 permit in accordance with section 13-0316 of this title; and
- 20 b. the department shall regulate and control the use of certain types  
21 of vessels and equipment for harvesting shellfish, requirements for  
22 reseeding, the right to enter upon such leased lands for reseeding or  
23 making shellfish population surveys, and enforce all other applicable  
24 state laws relating to said underwater lands.

25 7. LEASES FOR SEAWEEED CULTIVATION.

26 A. SUFFOLK COUNTY MAY LEASE LANDS UNDER WATER CEDED TO IT BY THE STATE  
27 FOR THE PURPOSE OF SEAWEEED CULTIVATION AFTER APPROVAL BY THE COUNTY  
28 LEGISLATURE OF A SEAWEEED CULTIVATION VIABILITY STUDY. PROVIDED IF NO  
29 SUCH LEASES HAVE BEEN EXECUTED BY DECEMBER THIRTY-FIRST, TWO THOUSAND  
30 TWENTY, SUCH AUTHORITY TO LEASE PURSUANT TO THIS SECTION SHALL TERMI-  
31 NATE. FOR THE PURPOSES OF THIS SECTION, "SEAWEEED" MEANS ANY SPECIES OF  
32 MARINE MACROALGAE APPROVED BY THE COMMISSIONER FOR CULTIVATION IN THE  
33 WATERS OF GARDINER'S AND PECONIC BAYS.

34 B. LEASES MAY BE ISSUED ONLY WITHIN AREAS DESIGNATED AS SEAWEEED CULTI-  
35 VATION ZONES ON A MAP OR MAPS TO BE PREPARED AND APPROVED BY THE COUNTY  
36 OF SUFFOLK.

37 C. NO LEASE SHALL BE GRANTED EXCEPT UPON WRITTEN APPLICATION ON FORMS  
38 FURNISHED BY THE COUNTY OF SUFFOLK, AND PROPERLY EXECUTED AND SIGNED BY  
39 THE APPLICANT.

40 D. BEFORE A LEASE IS APPROVED, NOTICE SHALL BE PROVIDED FOR AT LEAST  
41 TWO MONTHS BY POSTING SUCH NOTICE AT THE BUREAU OF MARINE RESOURCES IN  
42 THE DEPARTMENT, THE OFFICE OF THE COUNTY CLERK, AND THE OFFICE OF THE  
43 TOWN CLERK IN WHICH ALL OR ANY PART OF THE LANDS TO BE LEASED ARE  
44 LOCATED. SUCH NOTICE SHALL ALSO BE PUBLISHED IN THE OFFICIAL NEWSPAPER  
45 OF THE COUNTY. THE NOTICE SHALL INCLUDE THE NAME OF THE LESSEE, THE  
46 BOUNDARIES OF THE LEASE, AND THE AREA OF THE LEASE. A COPY OF THE  
47 PROPOSED LEASE SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND COPYING IN  
48 THE OFFICE OF THE COUNTY CLERK.

49 E. BEFORE LEASING OR USING THE LANDS HEREBY CEDED TO IT FOR SEAWEEED  
50 CULTIVATION, THE COUNTY OF SUFFOLK SHALL CAUSE AN ACCURATE SURVEY TO BE  
51 MADE OF SUCH LANDS, AND A MAP OR MAPS TO BE PREPARED THEREFROM. SUCH  
52 MAP OR MAPS SHALL ESTABLISH SEAWEEED CULTIVATION ZONES WITHIN GARDINER'S  
53 AND PECONIC BAYS. SUCH MAP OR MAPS SHALL BE APPROVED BY LOCAL LAW.  
54 AFTER SUCH MAP OR MAPS HAVE BEEN ADOPTED, THE COUNTY SHALL HAVE THE  
55 AUTHORITY TO ISSUE LEASES FOR SEAWEEED CULTIVATION WITHIN THE SEAWEEED

1 CULTIVATION ZONES, AS PROVIDED HEREIN. SUCH MAP OR MAPS SHALL BE UPDATED  
2 BY THE COUNTY OF SUFFOLK EVERY FIVE YEARS.

3 F. UNDERWATER LANDS WITHIN ONE THOUSAND FEET OF THE HIGH WATER MARK  
4 SHALL NOT BE INCLUDED IN A SEAWEEED CULTIVATION ZONE.

5 G. UNDERWATER LANDS WHERE BAY SCALLOPS ARE PRODUCED REGULARLY AND  
6 HARVESTED ON A COMMERCIAL BASIS SHALL NOT BE INCLUDED IN A SEAWEEED  
7 CULTIVATION ZONE.

8 H. UNDERWATER LANDS WHERE THERE IS AN INDICATED PRESENCE OF SHELLFISH  
9 IN SUFFICIENT QUANTITY AND QUALITY AND SO LOCATED AS TO SUPPORT SIGNIF-  
10 ICANT HAND RAKING AND/OR TONGING HARVESTING SHALL NOT BE INCLUDED IN A  
11 SEAWEEED CULTIVATION ZONE.

12 I. UNDERWATER LANDS WHERE THE LEASING WILL RESULT IN A SIGNIFICANT  
13 REDUCTION OF ESTABLISHED COMMERCIAL FINFISH OR CRUSTACEAN FISHERIES  
14 SHALL NOT BE INCLUDED IN A SEAWEEED CULTIVATION ZONE.

15 J. THE COUNTY SHALL, BY LOCAL LAW, BEFORE LEASING ANY SUCH UNDERWATER  
16 LANDS, ADOPT REGULATIONS GOVERNING:

- 17 (1) APPLICATIONS FOR LEASES;
- 18 (2) NOTICES TO BE GIVEN;
- 19 (3) THE FORM AND TERMS OF LEASES;
- 20 (4) STANDARDS FOR THE APPROVAL OR DENIAL OF LEASES;
- 21 (5) ADMINISTRATION OF LEASES;
- 22 (6) THE TRANSFER OR RENEWAL OF LEASES;
- 23 (7) MARKING GROUNDS AND TESTING;
- 24 (8) FEES;
- 25 (9) RECORDING OF LEASES;
- 26 (10) BONDS; AND
- 27 (11) SUCH OTHER MATTERS AS ARE APPROPRIATE TO THE LEASING PROGRAM.

28 K. NOTWITHSTANDING ANY OF THE PROVISIONS OF THIS SECTION:

29 (1) ANY PERSON ENGAGING IN THE CULTIVATION OR HARVESTING OF SEAWEEED IN  
30 A SEAWEEED CULTIVATION ZONE PURSUANT TO THIS SECTION SHALL OBTAIN ALL  
31 PERMITS REQUIRED BY THIS CHAPTER;

32 (2) THE DEPARTMENT SHALL REGULATE AND CONTROL THE USE OF CERTAIN TYPES  
33 OF VESSELS AND EQUIPMENT FOR HARVESTING SEAWEEED, REQUIREMENTS FOR  
34 RESEEDING, THE RIGHT TO ENTER UPON SUCH LEASED LANDS, AND ENFORCE ALL  
35 OTHER APPLICABLE STATE LAWS RELATING TO SAID UNDERWATER LANDS; AND

36 (3) ANY PERSON ENGAGING IN THE CULTIVATION OR HARVESTING OF SEAWEEED IN  
37 A SEAWEEED CULTIVATION ZONE PURSUANT TO THIS SECTION SHALL RECEIVE  
38 SPECIES APPROVAL FROM THE COMMISSIONER.

39 [7.] 8. Duties of the county clerk. Leases issued pursuant to this  
40 section shall be recorded in the office of the county clerk in the  
41 manner and form to be determined by local law as provided in subdivision  
42 five of this section.

43 [8.] 9. Summary proceedings. Upon the failure of a lessee to pay the  
44 rental on any date due under the terms of the lease or upon revocation  
45 as provided for by local law pursuant to subdivision five OR SEVEN of  
46 this section, the county may, after written notice to the lessee declare  
47 the lease cancelled as of the date set forth in such notice, and may  
48 immediately thereafter evict the lessee from such lands. The provisions  
49 of article seven of the real property actions and proceedings law shall  
50 apply and govern the procedure in such case.

51 [9.] 10. Disposition of fees and rents. All fees and rents received  
52 shall be deposited into the general fund of the county. However, in the  
53 alternative, nothing shall prohibit the county of Suffolk, by local law,  
54 from establishing a special fund for the promotion of aquaculture where  
55 such fees and rents shall be deposited.

1     S 2. If any clause, sentence, paragraph, section or part of this act  
2 shall be adjudged by any court of competent jurisdiction to be invalid,  
3 such judgment shall not affect, impair or invalidate the remainder ther-  
4 eof, but shall be confined in its operation to the clause, sentence,  
5 paragraph, section or part thereof directly involved in the controversy  
6 in which such judgment shall have been rendered.  
7     S 3. This act shall take effect immediately.