

S. 2106

A. 3036

2015-2016 Regular Sessions

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

January 21, 2015

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. ENGLEBRIGHT -- read once and referred 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

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

LBD00460-01-5

1 POLICIES. The commissioner of general services shall incorporate those
2 conditions in any lease, easement, permit or other interest, [giving due
3 regard as well to the recommendations of the secretary of state with
4 respect to coastal issues,] or shall deny the proposal if the commis-
5 sioner of environmental conservation, upon administrative findings,
6 determines that the environment or natural resources cannot be adequate-
7 ly protected. Such lease, easement, permit, or other conveyance of an
8 interest shall state the purpose for which it is made, and shall also be
9 subject to all applicable federal, state and local laws, rules, regu-
10 lations and codes.

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

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

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

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

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

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

51 (D) THE COMMISSIONER OF GENERAL SERVICES IN DECIDING WHETHER TO GRANT
52 SUCH LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF INTEREST SHALL
53 CONSIDER THE ENVIRONMENTAL IMPACT STATEMENT AND THE INFORMATION GIVEN AT
54 THE PUBLIC HEARINGS. SUCH COMMISSIONER SHALL INCORPORATE SUCH INFORMA-
55 TION AND THE RECOMMENDED CONDITIONS PURSUANT TO CLAUSE (C) OF THIS
56 SUBPARAGRAPH IN ANY LEASE, EASEMENT, PERMIT OR OTHER CONVEYANCE OF

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

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

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