

# STATE OF NEW YORK

2695

2017-2018 Regular Sessions

## IN ASSEMBLY

January 20, 2017

Introduced by M. of A. FAHY -- read once and referred to the Committee on Local Governments

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:

1 Section 1. The parks, recreation and historic preservation law is  
2 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.

13 § 16.01 Declaration of policy. The legislature finds and declares that  
14 municipally owned parkland enhances the quality of life, community char-  
15 acter, and economic vitality of local communities and provides healthy  
16 and affordable recreational and educational opportunities to New York  
17 state residents and visitors. Once lost, municipal parkland is diffi-  
18 cult to recover. Accordingly, the discontinuation or alienation of  
19 municipal parkland should be accompanied by replacement with comparable  
20 parkland to be available to the community and residents of the state.

21 New York state courts have long held that municipal parkland is  
22 subject to a "public trust" for the benefit of the public. For more than  
23 a century, New York state courts have upheld the requirement that munic-  
24 ipal parkland may not be alienated without prior enactment of state

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

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1 legislation authorizing such alienation. This body of law is commonly  
2 referred to as the "public trust doctrine".

3 Without limiting or restricting the existing "public trust doctrine,"  
4 it is hereby declared to be the public policy and in the public interest  
5 of this state to provide for a comprehensive program administered by the  
6 office to review proposals to alienate municipal parkland in order to  
7 promote the use, protection, and maintenance of municipal parkland for  
8 the enjoyment, welfare, recreation, prosperity, and enrichment of the  
9 people of the state of New York.

10 § 16.03 Definitions. When used in this article:

11 1. "Municipal parkland" shall mean real property or interests therein  
12 that is owned by a municipality that provides public park, recreation,  
13 or open space protection purposes. Municipal parkland includes: lands  
14 that have been dedicated for such purposes by the municipality through a  
15 formal resolution or similar action; lands that have been purchased or  
16 accepted for such purposes; or lands that currently or historically have  
17 been available to and used by the public for such purposes.

18 2. "Municipal parkland alienation" shall mean any action by a munici-  
19 pality to sell, lease, discontinue, or change the use of municipal park-  
20 land.

21 3. "Municipality" shall mean a county, town, city, or village. It  
22 shall also mean a school district or other political subdivision in  
23 instances where such entity has obtained state or federal grant funding  
24 for the creation of municipal parkland.

25 4. "Parkland alienation legislation" shall mean legislation introduced  
26 in the state legislature authorizing a municipality to alienate parkland  
27 under its jurisdiction.

28 5. "State or federal grant funding" shall include but is not necessar-  
29 ily limited to: grants provided pursuant to the state park and recre-  
30 ation land acquisition bond acts of 1960 and 1965, the outdoor recre-  
31 ation development bond act of 1965, the environmental quality bond act  
32 of 1986, the environmental protection act of 1993 and the clean  
33 water/clean air bond act of 1996; funds provided through state appropri-  
34 ation or grant programs for parkland purposes; and the federal land and  
35 water conservation fund and the urban park and recreation recovery  
36 program.

37 6. "Public trust doctrine" shall mean the body of state judicial court  
38 decisions that hold that municipal parkland, and some other publicly  
39 held lands, are held in trust for the benefit of the public and cannot  
40 be used for any other purpose without legislative authorization.

41 § 16.05 Municipal parkland alienation. No municipality shall alienate  
42 municipal parkland unless it has received prior authorization through  
43 the enactment by the legislature and approval by the governor of park-  
44 land alienation legislation. All such legislation shall include, at a  
45 minimum, the following elements:

46 1. The legislation shall include a description of the parcel of munic-  
47 ipal parkland proposed to be alienated including a formal metes and  
48 bounds description and the total acreage being alienated.

49 2. Except as provided for in subdivision three of this section, munic-  
50 ipal parkland alienation legislation shall include a requirement that  
51 the municipality acquire and dedicate replacement parkland. The replace-  
52 ment parkland must be of similar or greater acreage and fair market  
53 value than the parcel to be alienated. The legislation shall include a  
54 general description of the replacement parkland including a formal metes  
55 and bounds description and the total acreage of the replacement parcel.  
56 The legislation shall also include a requirement that the authorization

1 to alienate existing municipal parkland shall not become effective until  
2 the municipality has first acquired and dedicated replacement parkland.

3 3. Acquisition and dedication of replacement parkland shall not be  
4 required by such legislation in the following instances only:

5 (a) In the case of municipal parkland being alienated for purposes of  
6 an easement for a utility, the legislation shall include a requirement  
7 that the municipality dedicate the fair market value of the easement for  
8 the acquisition of additional parkland or capital improvements to exist-  
9 ing parkland facilities. The legislation shall also require that surface  
10 disturbances to parkland be restored and that, once restored, the land  
11 continue to be used for parkland purposes.

12 (b) In the case of municipal parkland being alienated through a lease  
13 authorizing a non-municipal entity to construct or operate a park-relat-  
14 ed facility within municipal parkland, the legislation shall require  
15 that such facility continue to provide sufficient public benefit to be  
16 considered a public facility; provided that legislation authorizing any  
17 lease for a non-park-related facility or use, or for a park-related  
18 facility with insufficient public benefit to be considered a public  
19 facility, shall require replacement parkland.

20 (c) In the case of municipal to municipal (or other government unit)  
21 transfer where the parkland will continue to be operated as a parkland.

22 4. All such legislation shall include the following language: "If the  
23 parkland that is the subject of this legislation has received funding  
24 pursuant to the federal land and water conservation fund, the discontin-  
25 uance of parkland authorized by the provisions of this legislation shall  
26 not occur until the municipality has complied with the federal require-  
27 ments pertaining to the conversion of parklands, including satisfying  
28 the secretary of the interior that the discontinuance will include all  
29 conditions which the secretary of the interior deems necessary to assure  
30 the substitution of other lands shall be equivalent in fair market value  
31 and recreational usefulness to the lands being discontinued."

32 § 16.07 Parkland alienation proposal review. 1. No parkland alienation  
33 legislation shall be enacted unless a municipality has first applied for  
34 and received from the office a certification that the proposed alien-  
35 ation satisfies the requirements of section 16.05 of this article. The  
36 application for certification shall be submitted to the office by the  
37 governing body of a municipality in a form prescribed by the commission-  
38 er and shall, at a minimum, contain the following information and  
39 supporting documentation:

40 (a) A description of the parkland to be alienated, including a general  
41 description of the land, a formal metes and bounds description of the  
42 parcel, the total acreage being alienated, and the fair market value of  
43 the parcel.

44 (b) A description of the replacement parkland including a general  
45 description of the replacement land, a formal metes and bounds  
46 description, the total acreage of the parcel, and the fair market value  
47 of the parcel. It shall also contain a discussion of its proximity to  
48 the parkland being alienated.

49 (c) In the case of municipal parkland being alienated for purposes of  
50 an easement for a utility, a description of how the proceeds of a sale  
51 or lease or the easement would be dedicated for the acquisition of addi-  
52 tional parklands and/or for capital improvements to existing park and  
53 recreational facilities.

54 (d) In the case of a lease authorizing a non-municipal entity to  
55 construct or operate a park-related facility within municipal parkland,

1 an explanation of the impact of such lease on public access to the park-  
2 land.

3 (e) A description of the municipality's compliance with the state  
4 environmental quality review act as set forth in article eight of the  
5 environmental conservation law, including completed copies of the  
6 required forms, statements, and assessments of the environmental impacts  
7 of the proposed municipal parkland alienation.

8 2. Within ninety days of receiving a complete application, the office  
9 shall respond in writing and either:

10 (a) Issue a certification that the proposed municipal parkland alien-  
11 ation meets the requirements of section 16.05 of this article; or

12 (b) Deny the certification, providing an explanation for the denial  
13 and where appropriate suggesting changes or additions that would result  
14 in issuance of a certification. Within thirty days of receiving a  
15 revised application, the office shall reconsider the application and  
16 notify the municipality in writing whether the certification has been  
17 issued or denied.

18 3. The provisions of this section do not apply to the siting of major  
19 utility transmission facilities subject to article seven of the public  
20 service law.

21 § 16.09 Parkland alienation reporting. Any municipality that has  
22 received alienation authorization through enactment of municipal park-  
23 land alienation legislation shall submit a report to the office no later  
24 than December thirty-first of the calendar year following the enactment  
25 of the legislation. Such report shall be signed by the municipality's  
26 chief executive officer and shall include:

27 1. A narrative description of the status of the parkland alienation  
28 actions authorized and required in the legislation; and

29 2. An attestation that the municipality has complied with all condi-  
30 tions of the parkland alienation legislation, including the dedication  
31 of any required replacement parkland or, in the case of utility ease-  
32 ments, the dedication of funding for the acquisition of additional park-  
33 land or capital improvements to existing parkland facilities; or

34 3. In the event that any condition of the parkland alienation legis-  
35 lation has not been fully complied with, the municipality shall provide  
36 the office with an interim report detailing the status of its actions  
37 and an explanation as to why certain conditions have not been met, along  
38 with the anticipated date by which such conditions will be met. The  
39 municipality shall continue to file interim reports annually until such  
40 time as the conditions have been met and a final report is filed.  
41 Unless a longer time period is specified in the legislation authorizing  
42 the alienation, if the conditions of the alienation have not been met by  
43 December thirty-first of the third calendar year following the enactment  
44 of parkland alienation legislation, the municipality shall be subject to  
45 enforcement pursuant to section 16.11 of this article.

46 § 16.11 Parkland alienation enforcement. An action for injunctive  
47 relief as provided in this section against a municipality violating any  
48 provision of this article may be brought by the attorney general upon  
49 referral by the office or upon his or her own initiative.

50 1. A municipality may be enjoined from alienating parkland where it  
51 acts or has acted in furtherance of parkland alienation:

52 (a) without the enactment of parkland alienation legislation;

53 (b) without obtaining certification from the office as required by  
54 this article;

55 (c) without compliance with the terms of parkland alienation legis-  
56 lation; or

1 (d) without compliance with the requirements of this article, includ-  
2 ing reporting requirements.

3 Where appropriate, such municipality may be compelled to restore such  
4 parkland to park purposes or to replace parkland alienated in violation  
5 of this article.

6 2. A municipality that fails to provide replacement parkland where  
7 required by parkland alienation legislation may be compelled to pay to  
8 the office an amount equal to the fair market value of the alienated  
9 parkland, which funds shall be used by the office to acquire replacement  
10 parkland.

11 § 16.13 State audits. With the advice and guidance of the office, the  
12 office of the state comptroller shall be empowered to conduct audits of  
13 all municipal parkland alienation legislation to ensure compliance with  
14 the terms therein.

15 § 16.15 Public trust doctrine not affected. Nothing in this article  
16 shall be construed to limit or restrict public trust doctrine principles  
17 that have been established through state judicial court decisions or to  
18 prevent enforcement of the public trust doctrine by any person including  
19 individual citizens of the state of New York.

20 § 2. The state commissioner of parks, recreation and historic preser-  
21 vation is authorized to promulgate such guidelines and/or rules and  
22 regulations as he or she deems necessary to implement the provisions of  
23 this act on or before its effective date.

24 § 3. This act shall take effect immediately.