

# STATE OF NEW YORK

7869

## IN SENATE

March 5, 2018

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public lands law, in relation to establishing a right of first refusal in the state for federal public land to be transferred; and to amend the real property law, in relation to establishing the manner in which documents regarding federal lands shall be recorded

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public lands law is amended by adding a new section  
2 21-a to read as follows:

3 § 21-a. Conveyance of federal lands. 1. For purposes of this section,  
4 the following terms apply:

5 a. "Conservation plan" means a habitat conservation plan developed  
6 pursuant to section 10 of the federal Endangered Species Act of 1973 (16  
7 U.S.C. Sec. 1539) and its implementing regulations, as the federal act  
8 and regulations exist as of January 1, 2016.

9 b. "Conveyance" includes any method, including sale, donation or  
10 exchange, by which all or a portion of the right, title, and interest of  
11 the United States in and to federal lands located in the state is trans-  
12 ferred to another entity.

13 c. "Federal public land" means any land owned and managed by the  
14 United States, including the surface estate, the subsurface estate, or  
15 any improvement on those estates, which is owned and managed by the fish  
16 and wildlife service, the forest service and the national park service.

17 d. "Infrastructure" means any development or construction that is not  
18 on or appurtenant to the federal public land at the time of transfer.

19 2. a. Notwithstanding any other provision of the law, it is the policy  
20 of the state to discourage conveyances that transfer ownership of feder-  
21 al public lands in the state from the federal government.

22 b. (i) Except as provided in this section, conveyances of federal  
23 public lands in the state are void ab initio unless the commissioner of  
24 general services was provided with the right of first refusal to the

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

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1 conveyance or the right to arrange for the transfer of the federal  
2 public land to another entity.

3 (ii) The commissioner of general services may seek declaratory and  
4 injunctive relief from a court of competent jurisdiction to contest  
5 conveyances made to any entity unless the requirements of this section  
6 are met.

7 (iii) The commissioner of general services shall formally consider its  
8 right of first refusal or arrange for the transfer of federal public  
9 lands to a third party at a public hearing.

10 (iv) (A) Prior to the conveyance of federal public lands in state, if  
11 the commissioner of general services was provided with the right of  
12 first refusal or the right to arrange for the transfer of the federal  
13 public lands to another entity, the commissioner of general services  
14 shall issue a certificate affirming compliance with this section.

15 (B) The commissioner of general services shall waive its right of  
16 first refusal or the right to arrange for the transfer of the federal  
17 public lands to another entity, and issue a certification of compliance  
18 affirming compliance with this section for a conveyance that is deemed  
19 by the commissioner of general services to be routine. A conveyance  
20 deemed by the commissioner of general services to be routine includes,  
21 but is not limited to, the exchange of lands of equal value between the  
22 federal government and a private entity. The commissioner of general  
23 services may adopt regulations to establish a process and criteria for  
24 determining the types of conveyances it considers to be routine.

25 (v) The commissioner of general services, and the department of envi-  
26 ronmental conversation shall enter into a memorandum of understanding  
27 that establishes a state policy that both agencies shall undertake all  
28 feasible efforts to protect against any future unauthorized conveyance  
29 or any change in federal public land designation, including, but not  
30 limited to, any change in use, classification, or legal status of any  
31 lands designated as federal monuments pursuant to the federal Antiqui-  
32 ties Act of 1906.

33 3. The state shall not be responsible for any costs associated with  
34 conveyed federal public land that the commissioner of general services  
35 did not accept, purchase, or arrange for the transfer of, pursuant to  
36 this section. Costs include, but are not limited to, management costs  
37 and infrastructure development costs.

38 4. The commissioner of general services may establish, through regu-  
39 lations or another appropriate method, a process for engaging with  
40 federal land managers and potential purchasers of federal public lands  
41 early in the conveyance process.

42 5. The commissioner of general services shall ensure, for any conveyed  
43 federal public land the commissioner accepts, purchases, or arranges for  
44 the transfer of, that future management of the conveyed federal public  
45 land is determined in a public process that gives consideration of past  
46 recognized and legal uses of those lands. At a minimum, the public proc-  
47 ess required by this subdivision shall include a noticed and open meet-  
48 ing.

49 6. The commissioner of general services shall waive its right of first  
50 refusal or the right to arrange for the transfer of the federal public  
51 lands to another entity, and issue a certification of compliance affirm-  
52 ing compliance with this section for any of the following:

53 a. The conveyance of federal public lands pursuant to a conservation  
54 plan.

55 b. The renewal of a lease in existence as of January 1, 2017.

1 c. The conveyance of federal public lands to a federally recognized  
2 Native American tribe or lands taken into or out of trust for a Native  
3 American tribe or individual Native American.

4 7. The provisions of this section are severable. If any provision of  
5 this section or its application is held invalid, the invalidity shall  
6 not affect other provisions or applications that can be given effect  
7 without the invalid provision or application.

8 8. This section shall not apply to the sale of real property acquired  
9 by a federal agency through a foreclosure proceeding.

10 § 2. The real property law is amended by adding a new section 291-k to  
11 read as follows:

12 § 291-k. Recording of documents regarding federal lands. 1. A person  
13 shall not knowingly present for recording or filing with a county clerk  
14 a deed, instrument, or other document related to a conveyance subject to  
15 section twenty-one-a of the public lands law unless it is accompanied by  
16 a certificate of compliance from the commissioner of general services.  
17 Further, a deed, instrument, or other document related to a conveyance  
18 that is subject to section twenty-one-a of the public lands law shall be  
19 titled "Federal Public Land Deed of Conveyance" and shall not be  
20 recorded without a certificate from the commissioner of general  
21 services. The federal agency wishing to convey federal public lands  
22 shall ensure that the deed, instrument, or other conveyance document is  
23 titled in the manner required by this section.

24 2. A person who presents for recording or filing with a county clerk a  
25 deed, instrument or other document in violation of this section is  
26 liable for a civil penalty not to exceed five thousand dollars.

27 3. Civil penalties collected pursuant to this section shall be depos-  
28 ited into the general fund.

29 § 3. This act shall take effect on the one hundred twentieth day after  
30 it shall have become a law; provided, however, that effective immediate-  
31 ly, the addition, amendment and/or repeal of any rule or regulation  
32 necessary for the implementation of this act on its effective date is  
33 authorized and directed to be made and completed on or before such  
34 effective date.