

# STATE OF NEW YORK

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3206

2019-2020 Regular Sessions

## IN ASSEMBLY

January 28, 2019

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Introduced by M. of A. ENGLEBRIGHT, GUNTHER, JAFFEE, AUBRY, LIFTON --  
Multi-Sponsored by -- M. of A. CRESPO, PERRY, THIELE -- read once and  
referred to the Committee on Transportation

AN ACT to amend the highway law, in relation to authorizing the leasing  
of land adjacent to state and local highways for the purpose of the  
construction and operation of solar and wind electric generating  
systems; and to amend the public authorities law, in relation to  
granting such authorization to the metropolitan transportation author-  
ity

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

1 Section 1. Section 10 of the highway law is amended by adding a new  
2 subdivision 38-a to read as follows:

3 38-a. Have the power to lease, for a term not to exceed ninety-nine  
4 years, the property rights in air space, and/or unused surface or  
5 subsurface space in connection with any state-owned property under his  
6 or her jurisdiction or other property acquired for state highway  
7 purposes. Such leases shall be for the purposes of the construction and  
8 operation of solar and/or wind electric generating systems. Such systems  
9 may be mounted upon sound barriers, retaining walls, open unobstructed  
10 areas, parking lots, bridges, bridge structures, signs, sign structures  
11 and upon any other area upon the leased real property. The construction  
12 and operation of solar and wind electric generating systems subject to a  
13 lease authorized by this subdivision shall be subject to state and  
14 federal law, rules and regulations, but shall not be subject to any  
15 local law, resolution, ordinance, rule or regulation. The terms of any  
16 such lease shall be determined by the commissioner and shall be subject  
17 to the approval of the attorney general. In order to carry any such  
18 lease into effect, the commissioner is hereby authorized to execute and  
19 deliver, in the name of the people of the state, a lease to such proper-  
20 ty rights. Each such instrument of lease shall be prepared by the attor-

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

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1 ney general. No such lease by the commissioner shall deprive an abutting  
2 landowner of his or her right of access.

3 § 2. Section 102 of the highway law is amended by adding a new subdivi-  
4 sion 19 to read as follows:

5 19. Have the power, subject to the approval of the county governing  
6 body, to lease, for a term not to exceed ninety-nine years, the property  
7 rights in air space, and/or unused surface or subsurface space in  
8 connection with any county-owned property under his or her jurisdiction  
9 or other property acquired for county road purposes. Such leases shall  
10 be for the purposes of the construction and operation of solar and/or  
11 wind electric generating systems. Such systems may be mounted upon sound  
12 barriers, retaining walls, open unobstructed areas, parking lots, bridg-  
13 es, bridge structures, signs, sign structures and upon any other area  
14 upon the leased real property. The construction and operation of solar  
15 and wind electric generating systems subject to a lease authorized by  
16 this subdivision shall be subject to state and federal law, rules and  
17 regulations, but shall not be subject to any local law, resolution,  
18 ordinance, rule or regulation. The terms of any such lease shall be  
19 determined by the county superintendent, and shall be subject to the  
20 approval of the county governing body. Such lease by the county super-  
21 intendent shall not deprive an abutting landowner of his or her right of  
22 access.

23 § 3. Section 140 of the highway law is amended by adding a new subdivi-  
24 sion 20 to read as follows:

25 20. Have the power, subject to the approval of the town board, to  
26 lease, for a term not to exceed ninety-nine years, the property rights  
27 in air space, and/or unused surface or subsurface space in connection  
28 with any town-owned property under his or her jurisdiction or other  
29 property acquired for town road purposes. Such leases shall be for the  
30 purposes of the construction and operation of solar and/or wind electric  
31 generating systems. Such systems may be mounted upon sound barriers,  
32 retaining walls, open unobstructed areas, parking lots, bridges, bridge  
33 structures, signs, sign structures and upon any other area upon the  
34 leased real property. The construction and operation of solar and wind  
35 electric generating systems subject to a lease authorized by this subdivi-  
36 vision shall be subject to state and federal law, rules and regulations  
37 but shall not be subject to any local law, resolution, ordinance, rule  
38 or regulation. The terms of any such lease shall be determined by the  
39 town superintendent, and shall be subject to the approval of the town  
40 board. Such lease by the town superintendent shall not deprive an abut-  
41 ting landowner of his or her right of access.

42 § 4. Section 1265 of the public authorities law is amended by adding a  
43 new subdivision 15 to read as follows:

44 15. To lease, for a term not to exceed ninety-nine years, the property  
45 rights in air space, and/or unused surface or subsurface space in  
46 connection with any authority owned property or other property acquired  
47 for authority purposes. Such leases shall be for the purposes of the  
48 construction and operation of solar and/or wind electric generating  
49 systems. Such systems may be mounted upon sound barriers, retaining  
50 walls, open unobstructed areas, parking lots, bridges, bridge struc-  
51 tures, signs, sign structures and upon any other area upon the leased  
52 real property. The construction and operation of solar and wind electric  
53 generating systems subject to a lease authorized by this subdivision  
54 shall be subject to state and federal law, rules and regulations, but  
55 shall not be subject to any local law, resolution, ordinance, rule or  
56 regulation. The terms of any such lease shall be determined by the

1 authority. Such lease by the authority shall not deprive an abutting  
2 landowner of his or her right of access.

3 § 5. This act shall take effect immediately.