STATE OF NEW YORK

1189

2019-2020 Regular Sessions

IN SENATE

January 11, 2019

Introduced by Sen. RITCHIE -- 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 eliminating any yearly fees associated with the use of docks on public waterways

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

Section 1. Paragraph (e) of subdivision 7 of section 75 of the public lands law, as added by chapter 791 of the laws of 1992, is amended to read as follows:

(e)(i) The commissioner may impose a fee in connection with the issuance of any such lease, easement, permit, or other interest, which fee shall be established by rule pursuant to paragraph (f) of this subdivision, and which shall take into account other factors affecting value including but not limited to classes of structure, types of use (including whether the use is for public or private purposes), location and region, size, usefulness of the parcel standing alone and such other criteria as the commissioner may determine, but which shall exclude the value of improvements thereon constructed and maintained by the adjoining upland owner. **The commissioner shall not impose yearly fees for leases, easements, or permits, and any application fee for such shall be subject to the approval of the director of the budget. Application fees shall not exceed one hundred dollars.** The rules and regulations required by paragraph (f) of this subdivision shall prescribe that in the event an applicant for a lease, easement or other interest in real property shall dispute and request a reduction of the commissioner's determination of the value of the interest to be conveyed, the commissioner shall, upon the applicant's submission of an appraisal of the value of such property interest conducted in accord with standard and accepted appraisal methodology by an independent appraiser qualified as prescribed in this paragraph and which appraisal varies in its conclu-

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

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sion as to value by ten percent or more of the value previously established by the commissioner, and upon the applicant's agreement to be bound thereby, contract with a second independent appraiser, qualified as prescribed in this paragraph, to render an appraisal of the value of the interest proposed to be conveyed, the results of which appraisal shall be binding upon both the applicant and the commissioner of general services. Such appraiser shall be selected by the commissioner of general services from among a group of at least three appraisers identified by the applicant all of whom must be qualified as prescribed in this paragraph and each of whom must agree to employ standard appraisal methodology. For the purposes of this provision a qualified appraiser shall be certified by the secretary of state to transact business as a real estate general appraiser and shall conduct a regular business of the appraisal of real property interests. In the event that the appraisal contracted for in such manner shall conclude that the value of the property interest in question is equal to the value previously determined by the commissioner plus or minus ten percent, the entire cost of such appraisal shall be borne by the applicant, otherwise, the entire cost thereof shall be borne by the commissioner of general services.

(ii) [~~For leases, easements and conveyances of such interests for commercial use of structures on state-owned underwater lands, the annual fee imposed shall not exceed two percent of the user's net annual income for structures not in existence on the effective date of this paragraph. Nor, in connection with a structure in existence and in commercial use on the effective date of this paragraph, shall the fee charged in connection with such a conveyance made after the effective date of this subparagraph exceed annually the following schedule for five years following the effective date of the interest conveyed pursuant to subdivision (b) of this section provided timely application pursuant to that subdivision has been made: .2 (two-tenths) of one percent; second year: .4 (four-tenths) of one percent; third year: .6 (six-tenths) of one percent; fourth year: .8 (eight-tenths) of one percent; fifth year, and thereafter: one percent; provided that all such percentages in this paragraph shall be that percentage of the net income derived from the structure or structures on state-owned lands, excluding transactions involving sales or repair of boats, and sale of gasoline; and the dollar valuation of the interest conveyed shall not be increased from year to year during that five year period. The fee charged shall be discounted ten percent for annual permits.~~

~~(iii) For leases, easements and conveyances of such interests for residential use of non-exempt structures in existence and residential use on the effective date of this paragraph, the annual fee shall not exceed the lesser of twenty dollars per slip or one hundred dollars.~~

~~(iv)~~] Nothing in this paragraph shall preclude the commissioner of general services from agreeing, upon the request of and negotiation with the owner or user of adjacent upland, to such other conveyances or agreements consistent with this section providing for different periodic payments, or a more flexible payment structure, than the fee caps and fees, respectively, set forth for commercial and residential facilities herein. Moreover, notwithstanding the fee caps set in this section, the commissioner may exceed those caps if required to cover the yearly pro rata share, over the term of the conveyance or interest, of the administrative costs in connection with that conveyance or interest.

§ 2. Paragraph (f) of subdivision 7 of section 75 of the public lands law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

(f) The commissioner, in consultation with the commissioner of environmental conservation, the secretary of state, the office of parks, recreation and historic preservation and other interested state agencies administering state-owned lands underwater, shall promulgate pursuant to article two of the state administrative procedure act such rules with respect to grants, leases, easements and lesser interests for the use of state-owned land underwater, and the cession of jurisdiction thereof, as in his or her judgment are reasonable and necessary to protect the interests of the people in such lands underwater. Such regulations shall include without being limited to: the fees to be charged, consistent with the provisions of this section, including mitigation of such fees in the event of economic hardship on existing commercial enterprises; fee limitations to administrative expenses for municipal uses which are public, non-commercial and offer services free or for nominal fees, and for uses undertaken and operated for public and non-commercial purposes by not-for-profit corporations characterized as charitable corporations as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law, and for uses undertaken and operated for public purposes by a corporation formed pursuant to the religious corporation law or by a corporation formed pursuant to a special act of this state and which has as its principal purpose a religious purpose; such further exemptions for projects as the commissioner determines do not represent significant encroachments; limitations on grants, including conversion grants, with respect to underwater lands consistent with the public purposes of this subdivision and limiting such grants to exceptional circumstances; and factors to be examined in considering an application for a lease, easement or other interest. Those factors shall include without limitation the following: (i) the environmental impact of the project; (ii) the values for natural resource management, recreational uses, and commercial uses of the pertinent underwater land; (iii) the size, character and effects of the project in relation to neighboring uses; (iv) the potential for interference with navigation, public uses of the waterway and rights of other riparian owners; (v) the effect of the project on the natural resource interests of the state in the lands; (vi) the water-dependent nature of the use; (vii) and any adverse economic impact on existing commercial enterprises. [~~The final promulgation of rules establishing fees or fee structures~~] **Prior to their promulgation, any rules or regulations describing fees to be charged by the commissioner** shall be subject to the approval of the director of the budget**; however, the director of the budget shall not be authorized to allow any yearly fee for a lease, or the granting of an easement or permit for the use of state-owned land underwater**.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation by the commissioner of environmental conservation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.