STATE OF NEW YORK

8473--A

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

Introduced by M. of A. GOTTFRIED, SIMON, THIELE, L. ROSENTHAL, GLICK, MAMDANI, MITAYNES -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general obligations law, in relation to allowing for compensation for noise pollution by rotorcraft; and to amend chapter 592 of the laws of 1998, constituting the Hudson river park act, in relation to the use of certain heliports in the city of New York

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

Section 1. The general obligations law is amended by adding a new section 11-108 to read as follows:

§ 11-108. Compensation for noise pollution by rotorcraft. 1. For the purposes of this section, "rotorcraft" means an aircraft whose lift is derived principally from rotating airfoils, including but not limited to a helicopter.

2. Any person who shall have suffered interference with the use and enjoyment of private property or public parkland by a rotorcraft used in a manner that creates an unreasonable level of sustained noise at ground level, including the interior, balcony, or other outdoor area of a building, shall have a right of action against any person, except a passenger with no control of the operation of the rotorcraft other than the selection of a pre-designated route, who shall have caused or contributed to the use of such rotorcraft in such manner.

3. Such action may be brought in any court of competent jurisdiction.

4. A person shall not be liable under this section if the use of the rotorcraft in such a manner was:

(a) for purposes of heavy-lift operations in support of construction and infrastructure maintenance;

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

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(b) for purposes of public health and safety, including law enforcement, emergency response, disaster response, the provision of medical services, and providing other services;

(c) for the benefit of the general public, including flights carried out for research or for official purposes by a news organization; or

(d) consistent with United States department of transportation and federal aviation administration rules and regulations and on routes approved by the federal aviation administration, unless the use of such rotorcraft was for the primary purpose of (i) conducting sightseeing tours over New York city if the rotorcraft departed from outside New York city or was inconsistent with rules, regulations, stipulations, hours and routes approved, designated or agreed to by the New York city economic development corporation, or (ii) conducting photography, videography or similar production activities over New York city if such rotorcraft was not operated on behalf of a licensed film, television, photography or production company.

5. A person found liable under this section shall be liable for a penalty of not less than one thousand dollars and not more than ten thousand dollars for each day the rotorcraft creates an unreasonable level of noise at ground level, including the interior, balcony, or other outdoor area of a building.

6. The attorney general, in the name of the people of the state of New York, or a city corporation counsel on behalf of the locality, may bring an action to enjoin and restrain violations of this section and to obtain restitution and damages.

§ 2. Paragraph (v) of subdivision (g) of section 3 of chapter 592 of the laws of 1998, constituting the Hudson river park act, as amended by chapter 517 of the laws of 2013, is amended to read as follows:

(v) a non-tourism/non-recreation heliport for [~~commercial and emergency~~] permitted transportation use; and

§ 3. Subdivision (j) of section 3 of chapter 592 of the laws of 1998, constituting the Hudson river park act, as amended by chapter 517 of the laws of 2013, is amended to read as follows:

(j) "Prohibited use" means any of the following uses:

(i) residential;

(ii) manufacturing, except in furtherance of and incidental to park uses, provided that small scale creation of artisan foods or other craft products shall not be considered manufacturing;

(iii) warehousing;

(iv) hotel;

(v) incompatible governmental uses;

(vi) casino and riverboat gambling, and the docking of vessels to be used substantially for gambling or for transportation to such a vessel;

(vii) any facility for motorized aircraft, including a heliport except a heliport which is defined as a park/commercial use, provided the use of any heliport in the park by any operator, individual, business entity, organization or association, or any member, parent, subsidiary or affiliate thereof, that conducts or arranges prohibited flight operations, whether or not originating from a heliport in the park, shall be prohibited;

(viii) commercial office, except office space that is incidental to a permitted use, and further provided that such prohibition shall not apply to pier 57; and

(ix) other uses determined by the trust to be incompatible with the purposes of this act.

§ 4. Section 3 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended by adding two new subdivisions (o) and (p) to read as follows:

(o) "Permitted transportation use" means air transportation other than prohibited flight operations:

(i) for purposes of heavy-lift operations in support of construction and infrastructure maintenance;

(ii) for purposes of public health and safety, including law enforcement, emergency response, disaster response, and the provision of medical services;

(iii) for the benefit of the general public, including flights carried out for research or official purposes by a news organization; or

(iv) operated in accordance with United States department of transportation and federal aviation administration rules and regulations and on routes approved by the federal aviation administration.

(p) "Prohibited flight operations" means helicopter air transportation operated for the primary purpose of:

(i) conducting sightseeing tours over New York city, if such helicopter air transportation departs from outside New York city or is not operated in accordance with rules, regulations, stipulations, hours and routes approved, designated or agreed to by the New York city economic development corporation; or

(ii) conducting photography, videography or similar production activities over New York city, if such helicopter air transportation is not operated on behalf of a licensed film, television, photography or production company.

§ 5. Paragraph (v) of subdivision (m) of section 3 of chapter 592 of the laws of 1998, constituting the Hudson river park act, as amended by chapter 517 of the laws of 2013, is amended to read as follows:

(v) the development, operation and maintenance of a non-tourism/non-recreational heliport **for permitted transportation use** located between [~~west~~] **West** 29th and [~~west~~] **West** 32nd streets provided (A) that there shall be no structures other than the helicopter take-off or landing pads built on floating structures; and (B) such floating structures shall be no higher than a pier deck at low tide; and

§ 6. Subparagraph (ii) of paragraph (i) of subdivision 9 of section 7 of chapter 592 of the laws of 1998, constituting the Hudson river park act, as added by chapter 517 of the laws of 2013, is amended to read as follows:

(ii) a one story heliport terminal building, fuel tank structure and five accessory parking spaces used in connection with a water dependent non-tourism/non-recreational heliport **for permitted transportation use** to be located on a floating structure located between [~~west~~] **West** 29th and [~~west~~] **West** 32nd streets provided that the landing and takeoff area located east of the bulkhead may continue to operate until the landing and takeoff area west of the bulkhead is completed and operational; or

§ 7. Subdivision 13 of section 7 of chapter 592 of the laws of 1998, constituting the Hudson river park act, is amended to read as follows:

13. At all times, the trust shall take all reasonable and necessary steps to prevent and eliminate prohibited uses in the park, subject to the exceptions contained in this act**, including, without limitation, prohibiting any operator, individual, business entity, organization or association, or any member, parent, subsidiary or affiliate thereof, who conducts or arranges prohibited flight operations, whether or not originating from a heliport in the park, from accessing any heliport in the park**.

§ 8. This act shall take effect on the thirtieth day after it shall have become a law; provided that uses permitted under any lease, permit, license, or other instrument in effect upon the effective date of this act that would be prohibited upon the enactment of sections two, three, four, five, six and seven of this act may continue only pursuant to the terms of the instrument and only for the term thereof or pursuant to any extension according to the terms thereof if, but only if, the option to extend is exercised solely by and is a contractual right of the lessee, permittee, licensee or other contractual user.