STATE OF NEW YORK

8250

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

Introduced by M. of A. SANTABARBARA -- read once and referred to the Committee on Governmental 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:

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

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

a. "Conservation plan" means a habitat conservation plan developed pursuant to section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1539) and its implementing regulations, as the federal act and regulations exist as of the first of January, two thousand twenty.

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

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

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

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

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

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b. (i) Except as provided in this section, conveyances of federal public lands in the state are void ab initio unless the commissioner of general services was provided with the right of first refusal to the conveyance or the right to arrange for the transfer of the federal public land to another entity.

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

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

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

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

(v) The commissioner of general services, and the department of environmental conversation shall enter into a memorandum of understanding that establishes a state policy that both agencies shall undertake all feasible efforts to protect against any future unauthorized conveyance or any change in federal public land designation, including, but not limited to, any change in use, classification, or legal status of any lands designated as federal monuments pursuant to the federal Antiquities Act of 1906.

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

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

5. The commissioner of general services shall ensure, for any conveyed federal public land the commissioner accepts, purchases, or arranges for the transfer of, that future management of the conveyed federal public land is determined in a public process that gives consideration of past recognized and legal uses of those lands. At a minimum, the public process required by this subdivision shall include a noticed and open meeting.

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

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

b. The renewal of a lease in existence as of the first of January, two thousand twenty.

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

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

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

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

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

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

3. Civil penalties collected pursuant to this section shall be deposited into the general fund.

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